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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



19 JUN 2002

File: EAC-01-235-57683 Office: Vermont Service Center Date:

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

The petitioner 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 intended to continue working in his area of expertise or that he had 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

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(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.

On the petition, the petitioner listed the beneficiary's proposed employment as "shop mechanic" for L.E. Pipher Repairs, Inc. In one of several letters from the petitioner accompanying the petition, the petitioner asserts:

I could offer [the beneficiary] a coaching job at my High School which pays very little. I could get him many coaching jobs, but the pay is much better working for L.E. Pipher Repairs. This will afford him the opportunity to be there and help wrestling in Central New York.

In other letters, the petitioner implies that the beneficiary has been volunteering his coaching services at various clubs and would continue to do so if granted permanent residency. On November 20, 2001, the director issued a notice of intent to deny the petition, concluding that he record did not establish that the beneficiary sought to enter the United States primarily to continue working in his area of expertise. In response, the petitioner submitted a letter asserting that CNY

██████████ Wrestling Club will hire the beneficiary as a full-time wrestling coach for \$10,000 per year. The petitioner further asserts that the beneficiary has an opportunity to serve as a representative for Johns Sport Supply in Syracuse. Finally, the petitioner asserts that he would have attempted to secure full-time coaching employment for the beneficiary previously, but thought he could make more money at Pipher Repair. The petitioner states that the beneficiary would be happier as a full-time coach.

The director denied the petition, concluding that the petitioner had not established that the beneficiary sought to continue in his field of expertise. On appeal, the petitioner asserts that the CNY Pin2win Wrestling Club is now offering the beneficiary a full-time position as the head coach for the club and that the beneficiary will not work as a mechanic. 8 C.F.R. 204.5(h)(5) provides:

Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by *clear evidence* that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

(Emphasis added.) The evidence of record is not clear regarding the type of employment sought by the beneficiary. The petitioner initially claimed that the proposed employment was as a shop mechanic. While the petitioner now claims that the beneficiary will work full-time as a coach, 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), at 7. As such, we concur with the director on this issue. Regardless, for the reasons discussed below, the petitioner has not demonstrated that the beneficiary has extraordinary ability as a wrestling coach.

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.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a wrestler. 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 alternative 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 argues that the beneficiary has a one-time achievement in the field because he “placed” in the 1980 Olympics as an athlete and served as Hungary’s Olympic team coach in 1988 and 1992.

First, the record contains no evidence to support these claims, such as verification from the International Olympic Committee or the official Hungarian wrestling affiliate. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the regulations define a one-time achievement as a major, internationally recognized *award*. The beneficiary only claims to have been ranked 7th in 1980. While membership on an Olympic team may be evidence relating to one or more of the ten alternative regulatory criteria listed below, Olympic competition without winning a medal is not evidence of the alien’s one-time achievement. Further, the beneficiary allegedly competed in the Olympics in 1980, 21 years before the petitioner filing the petition. An Olympic medal awarded more than 20 years before the date of filing is not evidence of sustained national or international acclaim. Finally, coaching an Olympic team may be evidence relating to one or more of the alternative criteria listed below, but is not a one-time achievement, defined in the regulations as an award. Comparable evidence, while permissible in some cases to establish that an alien meets one of the alternative criteria, is not acceptable for the one-time achievement.

The petitioner claims the beneficiary meets 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 asserts that the beneficiary has won 13 national wrestling championships in Hungary, was on the Hungarian Olympic team in 1980 and 1984,¹ was the Hungarian head Olympic wrestling coach in 1988 and 1992, and was the assistant coach for the 1996 Olympics. Once again, awards from several years prior to the date of filing cannot establish sustained acclaim. Moreover, even if we accepted that the beneficiary seeks to continue in his field, he only intends to do so as a coach. Awards based on his athletic performances are not evidence of his ability as a coach. Coaching an Olympic medallist can be considered comparable evidence for this criterion. On his resume, the beneficiary indicates that in 1992 “our” wrestler won a gold medal at the Olympics. The beneficiary does not indicate that he personally coached this wrestler. Regardless, as stated above, the record contains no evidence supporting any of these claims.

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.

¹ The petitioner acknowledges that Hungary boycotted the Olympics in 1984; thus, the petitioner did not compete that year.

As stated above, the petitioner asserts that the beneficiary was the Olympic coach for Hungarian wrestling team in 1988 and 1992 and an assistant coach in 1996. While this position could be considered comparable evidence for this criterion, the record contains no evidence to support these claims.

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

The petitioner asserts that serving as a head coach for an Olympic team serves a critical role for the Hungary as a whole. A country has numerous interests, only one of which is athletics. We cannot conclude that every coach of every Olympic team has served a critical role for the entire country. Regardless, as stated above, the record contains no evidence that the beneficiary ever coached an Olympic team.

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. The statute requires extensive documentation for this classification. The petitioner failed to provide photographs of the beneficiary's alleged medals, copies of any certificates issued to the beneficiary, or evidence of his appointment as an Olympic coach. The petitioner submitted a letter from USA Wrestling of New York, an unsigned letter from Mohawk Valley Wrestling Club, and a letter from the Calvary Bible Baptist Church. None of these letters explain how the authors have personal knowledge of the beneficiary's accomplishments in Hungary. Moreover, evidence of national and international awards should come from the organization which issued the award.

Review of the record 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 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.