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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: WAC 01 131 56667 Office: California Service Center Date:

71 SEP 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, California 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. 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, filed on March 12, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a chess player. 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). On appeal, counsel asserts that the petitioner's certification as an "International Master" from the World Chess Federation is a major international achievement that demonstrates his extraordinary ability in chess. The plain wording of the regulation, however, clearly calls for "a major, international award." While such certification may demonstrate his advanced skill level and competitive ranking, it does not constitute the receipt of a major,

international award. The regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Examples of one-time awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are “household names,” recognized immediately even among the general public as being the highest possible honors in their respective fields. Being certified as an international master in chess does not enjoy immediate international recognition on a par with the almost universally-known awards described above.

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 that, counsel 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 provides a listing of his achievements, including awards from several national and international chess tournaments. The majority of the awards submitted, however, relate to youth, age group, or junior-level chess tournaments. Such awards, while commendable, do not reflect achievement at the highest level of competitive chess. The petitioner must show that he has earned national or international awards when competing at the highest level (including other International Masters), not just players within his own age group.

More recent awards from the petitioner’s listing reflect a higher level of national or international recognition. For example, the petitioner submits an article appearing in *Chess Life*, the official publication of the United States Chess Federation (the governing organization for chess in the U.S.). The article indicates that the petitioner won the 36th Annual American Open chess tournament and notes that the petitioner bested a Grandmaster to win first place. Also submitted was a second place award from the “5th FAJR International Chess Tournament” held in Tehran, Iran.

While the petitioner’s listing mentions other awards resulting from what appear to be non-junior-level international chess competitions, the petitioner offers no first-hand evidence to confirm their existence. 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). It must be emphasized that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The absence of evidence documenting the petitioner’s receipt of awards mentioned in his list of achievements is a critical omission from the record.

The petitioner submits evidence of a third place award from the “Chess Championship at the City of Gyoimri” and a first place award from the “40th Pacific Southwest Open,” but these awards reflect local or regional, rather than national, recognition.

In sum, the evidence provided by the petitioner minimally satisfies 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submits three articles from Armenian publications that devote less than two sentences each to the petitioner. The plain wording of the regulation requires the petitioner to submit “published materials about the alien,” and articles that barely even mention the petitioner cannot satisfy this criterion. Furthermore, the extent of the publications’ distribution, a key factor in determining whether they qualify as major media, has not been provided. The petitioner submits two additional articles from *Chess Magazine* of France that devote only four sentences each to the petitioner. The articles refer to him as “the unknown chess player from Armenia.” Such a description is hardly indicative of international acclaim.

The petitioner submits three additional articles that appear in the chess column of the *Los Angeles Times*. The column contains sections entitled “International News” and “Local News.” All three of the articles provided by the petitioner feature him under the “Local News” section and discuss his accomplishments at tournaments held in California. For a basis of comparison, we provide an excerpt from the “International News” section of the column:

Eight grandmasters tied for first place in the 28th Annual World Open, held June 28 to July 4 in Philadelphia... Southern California’s only Grandmaster, Eduard Gufeld, lost to Goldin in the final round and tied for 18th... The World Open guarantees the most prize money (\$200,000) and regularly draws the strongest field of any American event. This year, 127 players rated over 2200 (master level), including 25 grandmasters, competed.

No evidence has been provided showing that the petitioner has ever attended this event, which

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the Washington Post, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual’s reputation outside of that county.

“regularly draws the strongest field.” The petitioner’s coverage, under the “Local News” section of that same article, was limited to his participation at a local chess tournament in Los Angeles. In light of the above, we find that the articles from the *Los Angeles Times* fail to demonstrate the petitioner’s national or international acclaim in the field of chess.

The petitioner submits two other articles appearing in *Rank & File*, one of which was published subsequent to the filing of the petition. With respect to the article from *Rank & File* published prior to the filing date, there is no evidence indicating that this publication qualifies as a major publication within the meaning of the regulation. An article appearing in *Chess Life* was also published subsequent to the petition’s filing. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Thus, the two articles published in May 2001 cannot satisfy this criterion.

The petitioner also submits what appear to be event programs from the Pre-Olympic Chess Festival and European Junior Chess Championships, but it has not been shown that they rise to the level of major media.

Three additional articles were unaccompanied by certified English language translations. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Without complete translations, it cannot be determined whether the petitioner was the main subject of the articles or that he was featured because of his extraordinary achievements as a chess player.

In sum, the evidence submitted under this criterion fails to show that the petitioner has attracted the sustained attention of major national or international media.

Beyond the above criteria, the petitioner submits several witness letters. Nshan Keshishian, President of the AAA Chess Club in Los Angeles, California, describes the petitioner as a “chess master of renowned international acclaim in the junior division.” Jerry Hanken identifies himself as organizer of the American Open Chess Tournament in Southern California. He states: “[The petitioner] is participating with great success in all the weekend tournaments in this area, and earned clear first place in the 2000 American Open.” Randall Hough of the Southern California Chess Federation describes the petitioner as “a successful professional and an attribute to the Southern California chess community.” Jay Stallings, President of the Southern California Chess Federation, states that the petitioner “recently earned the right to be called Co-Champion for Southern California.” Jack Peters, Chess Columnist for the *Los Angeles Times*, wrote the three articles which were previously discussed under the “published materials” criterion. He states: “In California, [the petitioner] instantly became one of the state’s best players.” Jack Peters further states that the petitioner represented Armenia in the World Junior Championships and that the petitioner “holds the title of International Master, one rank below grandmaster.” In a letter submitted on appeal, Jack Peters asserts his belief that the petitioner “will become one of

the best chess players in the world.”

The above witnesses demonstrate the petitioner’s regional acclaim in Southern California, but fail to establish his national or international prominence as chess competitor. Many of the petitioner’s witnesses speculate on his future promise and often refer to him as a “junior” or “youth” champion. These statements support the director’s conclusion that the petitioner has not yet risen to the very top of his field. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. The assertion that the petitioner has a promising future does not establish eligibility, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim. Witnesses have asserted that the petitioner is very talented, and that someday he may become a grandmaster. Such attestations, however, cannot meet the extremely high threshold of extraordinary ability.

Smbat Lputyan identifies himself as an International Grandmaster and Champion of Europe (1999). He states: “I believe that [the petitioner] will have a brilliant future in chess.” Raphael Vaganian identifies himself as an International Grandmaster and multiple champion of Armenia. He describes the petitioner as “a gifted and remarkable chess player.” An individual identifying himself only as Volkov, Ex-Champion of Russia, states that the petitioner “is a promising chess player of high level.” A. Shabalov, a former U.S. champion, describes the petitioner as a “chess player with potential.” Grischuk Alexander identifies himself as a Champion of the World Chess Olympiad (2000) and International Grandmaster. He states: “[The petitioner] is steadily conquering new levels because of his hard work and great potential.”

The above letters are from impressive experts whose opinions are important in the field of chess. Although the petitioner has attracted the favorable attention of these prominent chess players, a simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment placing him at or near the top of his field. That these individuals have in some cases demonstrated achievements which dwarf those of the petitioner demonstrates that, however esteemed he may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those at the top of their field, not for those who are expected eventually to reach that level.

We further note that several of the petitioner’s witnesses possess the title of “International Grandmaster.” Throughout this proceeding the petitioner has argued that his “International Master” certification places him at the very top of his field. The existence of a level of distinction above international master, however, undermines such an argument. Information from the United States Chess Federation’s web site indicates that “thirty-one of the world’s 415 grandmasters are American.” The petitioner provides no evidence regarding the total number of international masters in Armenia, the United States, or throughout the world. Thus, the petitioner’s certification as an international master, while indicative of his success as a competitor, fails to demonstrate achievement at the very top of his field. The information provided by the petitioner only proves

that grandmasters, not international masters, possess the top distinction.

The petitioner also submits an August 2001 "Top 100 Rating List" from the United States Chess Federation's ("USCF") web site. The USCF's web site rating, which is published every two months, ranked the petitioner as number 52 in August of 2001. This ranking came into existence subsequent to the petition's filing. See Matter of Katigbak, supra. It has not been shown that the petitioner possessed such a ranking at the time the petition was filed. According to the web site, only current USCF members are included in this ranking. Therefore, the record is not fully clear as to how many active international masters and grandmasters from the U.S. are captured in this rating system. To the petitioner's credit, the USCF's web site boasts 80,000 paid members, but the record does not indicate how many of these members actually compete in professional chess tournaments, as opposed to simply being chess enthusiasts, club participants, or fans. Even if we were to consider his 52nd ranking in this proceeding, the regulation requires the petitioner to show that his acclaim has been sustained. The petitioner, however, has not provided evidence indicating that he maintained this ranking over several rating periods and consistently appeared high on the list. Nor has the petitioner shown that ranking among the top sixty USCF members for a single rating period places him at the pinnacle of his field. It must be emphasized that the petitioner holds no grandmaster certification and information reflecting the total number of international masters in the USCF has not been submitted.

For comparison, the Service has long held that athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *See* 56 Fed. Reg. 60897, 60899 (November 29, 1991). Likewise, it does not follow that all chess players possessing international master certification should necessarily qualify for an extraordinary ability immigrant visa. To do so would contravene Congress' intent that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

The petitioner also submits internet printouts of his chess moves from various tournaments and covers of CD-ROMs alleged to feature his chess games. The petitioner provides no evidence that the posting of tournament results on the internet is a rarity in the petitioner's field, nor evidence that the petitioner's results are featured more often than those of other international masters or grandmasters. The CD-ROM covers provided do not identify the petitioner as a contributor or featured expert, and the petitioner offers no evidence that he has ever received any royalties from their sale. Furthermore, one of the CD-ROM covers indicates that it features a historical archive of over one million games. Even if the petitioner were to prove that his chess games were featured on the CD-ROM, it has not been shown how the inclusion of the petitioner's games somehow elevates his performance above the majority of the players involved in the million other chess games featured.

In conclusion, the record is ambiguous regarding the petitioner's acclaim in his native Armenia, and at best limits his recent acclaim to Southern California. The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence which the petitioner may submit, but it does not follow that every chess player who has competed at the national or international level is among

the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. Review of the record does not establish that the petitioner has distinguished himself as a chess player 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.