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U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: EAC 02 133 51359 Office: VERMONT SERVICE CENTER Date: JAN 21 2004

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

for Mari Johnson
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 Administrative Appeals Office 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 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 pertinent regulations 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.

The petitioner is a fencing coach and instructor at the Boston Fencing Club

L. Stacy Eddy, director of the Academy of Fencing at the Boston Fencing Club, describes the position offered to the beneficiary:

> As the Director of the Academy I can offer [the petitioner] a position as a staff coach at the salary of $24,000.00 for a ten-month period. He would be able to supplement his income through individual/private lessons as well. His duties as fencing instructor will include, teaching classes at the Academy to all ages and abilities from beginners to those who compete at the national and international level. He will also serve as coach during competitions in which our students and Club members compete.

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 achieved sustained national or international acclaim are set forth in pertinent 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 petitioner's initial submission contains no introductory statement to specify which of the ten criteria the petitioner claims to have satisfied. The evidence presented appears to address only two of the criteria:

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

Counsel's introductory letter consists largely of the following list:

- Champion of the USSR as a member of the Ukraine national team (1991, 1992);
- Champion of Spartakiada of Peoples of the USSR (1991), Silver medallist of USSR Championship (1989), Bronze medallist of Spartakiada of Peoples of the USSR (1987);
- Silver medallist as a member of national team of USSR of International Tournament "Moskovskaya Sablya" (Sabre of Moscow) (1998);
- Winner of international competitions, repeated champion and medallist of Championships and Spartakiadas of Ukraine;
- Participant in three Championships of the World (Germany 1993, Greece 1994, and the Netherlands 1995);
- Participant in the first military Olympic games (Italy 1995);
- Silver medallist of European Cup as a member of USSR team (1991);
- Silver medallist of European Cup as a member of Ukraine team (1993);
- Bronze medallist of European Cup (Budapest 1990).

Some of the above claims regard participation in competitions; participation itself is not a prize or award.

The petitioner submits documentation of some awards, few if any of which correlate to any specific claims above. Certificates from various national and regional committees indicate that the petitioner won "the Third Prize in the Individual competitions of the Championships of Ukraine on fencing with sabers in the year of 1997"; "the First Prize in the international competitions on fencing in memory of V.O. Andriyevskyy, December 27-29, the city of Lviv"; "Second Prize in the Championship of fencing with sabers . . . March 14-15, 1994"; and "Third Prize at the First Spartakiada of Ukraine on fencing with sabers . . . June 6-13, 1995." The petitioner also participated on teams that, collectively, won third prize at the First All-Ukrainian Summer Games, April 1999, and won the Independent States' Championship in 1992.[1]

The petitioner's evidence demonstrates his receipt of several prizes and awards as a competitor in his own right. The petitioner, however, seeks to enter not as a competitor, but as a coach and instructor.

> *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 petitioner submits partial translations of three newspaper articles. The first partial translation, consisting of two sentences, is from an article that appeared in *Moloda Halychnya* in 2000. The article indicates that one of the petitioner's pupils won a silver medal at the "Sports Games." A second article is a list of "Champions and Medallists of the Championships of the World, Europe and Ukraine," published in *Lvivskyy Dynamivets* in 1997. The petitioner is among the fencers named on the list. The third article, from *Zamok Sportu*, indicates that two of the petitioner's pupils "have taken [respectively] the second and the third place" at an unnamed competition.

The petitioner has not shown that any of the above newspapers constitute major media, rather than primarily local papers. Furthermore, none of these articles is "about the alien." Rather, the articles briefly mention the petitioner

[1] This 1992 award could be the prize that counsel describes as "Champion of the USSR." The USSR no longer existed in 1992, having formally dissolved in 1991.

in other contexts. One is a list, which draws no particular attention to the petitioner. The other two articles are general overviews of competitions, which identify several competitors and their coaches. Because the articles are only partial translations, we cannot determine that the articles are predominantly about the petitioner, as the regulations require. At best, these articles serve as secondary support for the contention that the petitioner and his pupils have won prizes and awards.

The director instructed the petitioner to submit further information to establish that the petitioner is nationally or internationally acclaimed at the top of his field. The director noted that the petitioner has been offered only $24,000 a year by the Boston Fencing Club, a sum which the director deemed "very modest."

In response, counsel asserts that modest salaries represent "a sport-wide phenomenon in this country" because fencing is not among the more established sports in the United States. With regard to the petitioner's reputation in the field, counsel asserts that the petitioner's repeated successes in national and international tournaments demonstrate his skill in the sport. Regarding the petitioner's coaching work, counsel states:

> Since 1998, he has served as head coach of the fencing team from Lvov, Ukraine. With his guidance and instruction, the Lvov team captured bronze medals at the All-Ukrainian Sporting Games in 1999 and 2000. In 2001, his team was champion of the Ukrainian Schoolchildren Sports Festival. Also in 2001, [the petitioner's] student, K. Gritsayev, placed seventh in the World Cadet Championship in Gdansk, Poland. . . .
>
> Furthermore, since 2001, [the petitioner] has been a trainer-consultant with the Ukrainian National Team. Significantly, only the very top of their field are invited to work with the national team.

The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's response to the director's notice did not include any first-hand, objective documentary evidence to support any of the above claims. The petitioner has, however, submitted new letters. George Pogosov, former head coach of the Ukrainian National Team, states:

> One of my teammates on the Soviet National Team and on the Ukrainian National Team was [the petitioner. The petitioner] is one of the best sabre fencers that I have ever fenced with. He is a fierce competitor and has achieved impressive results nationally and internationally. Indeed, [the petitioner] was only points away from making the 1992 Olympic team himself. In 1993, our Ukrainian National Sabre Team captured the silver medal in the European Championships in Budapest, Hungary.

Mr. Pogosov is now head fencing coach at Stanford University. The record does not disclose Mr. Pogosov's salary at Stanford, nor does it offer a reliable standard for comparing the position offered to the petitioner to that occupied by Mr. Pogosov at Stanford. Mr. Pogosov, having discussed the petitioner's record as an athlete, does not discuss the petitioner's record as a coach. He merely states "[h]aving been an extraordinary athlete, he is now an extraordinary coach."

O. Zhezhevich, identified as "head of the Department" (although the letter does not further identify this "Department"), states:

> [The petitioner] is holding a post of the L'vov region Chief trainer of fencing since 1998. In this period the team of the L'vov region gained Bronze medals on the First All-Ukrainian Sporting Games in 1999. In 2000 the team of the L'vov region became the Bronze prize winner of Ukraine. In 2001 the team of the L'vov region became a champion of the Ukrainian Schoolchildren Sports Festival. In 2001 on the World Cadet Championship in Gdansk (Poland) K. Gritsayev who has been trained by [the petitioner] gained the seventh place in personal competitions.
>
> Since 2001 [the petitioner] is holding a post in the National team of Ukraine as a trainer-consultant.

The record contains no other evidence about the competitions named above. The terms "schoolchildren" and "cadets" suggest very young fencers who have yet to reach the peak of their skills.

The director denied the petition, acknowledging the petitioner's past prizes as a competitive fencer, but concluding that the petitioner "seems to be at an early stage in his career as a fencing coach, primarily coaching young children. . . . [T]here are higher tiers in the field of coaching."

On appeal, the petitioner submits a brief from counsel, but no additional evidence. Counsel states that the petitioner "has been coaching for five years, since 1998. Only a year after embarking on his coaching career, [the petitioner's] Lvov team won the bronze medal in the All-Ukrainian Sporting Games. It repeated that achievement the following year, in 2000." While noting the absence of first-hand documentary evidence (as opposed to testimonial assertions) regarding these prizes, these claims satisfy only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), specifically the criterion relating to lesser prizes and awards. The regulations require evidence to satisfy at least three of the ten criteria, in keeping with the statutory demand for "extensive documentation" of acclaim as stated at section 203(b)(1)(A)(i) of the Act.

Regarding the petitioner's work with children, counsel states:

> In the countries of the former Soviet Union, coaches for promising young fencers are chosen much the same as for young gymnasts or skaters. Children, who have the most potential, are selected at an early age to receive instruction from the very best trainers and coaches. These young athletes receive the highest level of instruction, and go on to become the country's elite competitors. Accordingly, the fact that [the petitioner] coaches a number of young children supports, not undermines, his classification as an extraordinary coach.

Once again, the above claim has no support in the record, but even so, the fact that champion fencers are trained from an early age does not imply that the coaches working with the youngest fencers are "the very best trainers and coaches." Such an argument implies that lesser coaches are assigned to work with older fencers who qualify to compete in the Olympics and other international competitions. Therefore, we cannot uncritically accept the unsupported contention that the petitioner's work with "young children supports, not undermines," his claim of eligibility. Counsel's evaluation of the evidence of the record is questionable, given the serious discrepancies between counsel's list of the petitioner's awards, and the actual documentation of his awards.

Counsel refers to the witness letters discussed above, and asserts that these witnesses have attested to the petitioner's extraordinary ability as a coach. We take note of their evaluations of the petitioner's skills, but we cannot ignore the statutory demand for "extensive documentation" and the regulatory requirement that the petitioner must meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). These evidentiary

requirements heavily favor objective evidence that exists because of the petitioner's acclaim, rather than materials (such as witness letters) created specifically to assist the petitioner with his visa petition. The fact that two witnesses consider the petitioner to be an extraordinary coach does not supersede those statutory and regulatory requirements, nor do the witness letters constitute "extensive documentation" of acclaim.

The petitioner has repeatedly been put on notice regarding the ten regulatory criteria, first in the instructions accompanying the I-140 petition form, and again in the denial notice. Nevertheless, counsel has never addressed or acknowledged the ten criteria, much less explained which three the petitioner has purportedly satisfied. The regulations are binding, and counsel cannot arbitrarily substitute an alternative standard of extraordinary ability, such as letters from witnesses whom the petitioner has personally selected. The petitioner has documented a number of awards, but otherwise nothing in the record readily suggests satisfaction of the regulatory criteria. The objective documentation in the record is heavily weighted toward the petitioner's years as a competitive athlete rather than as a coach of other athletes.

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 fencing instructor/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 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.