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20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: JUL 12 2005

IN RE:

Petitioner:

Beneficiary:

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:

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.

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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on October 6, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an "Armwrestling Professional Athlete."

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 pertaining to 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.*

We note here that the plain wording of this criterion requires “nationally or internationally recognized” prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

The petitioner submitted a certificate issued by the City of New York Parks and Recreation on July 5, 2003. The certificate states: “THIS CERTIFIES THAT \_\_\_\_\_ [blank space, no name entered] HAS WON THIS DAY FIRST PLACE At The New York ‘Golden Arm’ Series 20<sup>th</sup> Annual ‘BRONXBORO’ ARM WRESTLING CHAMPIONSHIPS Held At ORCHARD BEACH, BRONX, NEW YORK.”<sup>1</sup> The certificate also notes that the recipient “Qualified for Nov. 13, 2003 Empire State Finals.” The petitioner also submitted a photograph picturing him holding his certificate. A caption under the photograph notes that the petitioner won the 150 pound weight class. The petitioner also provided a copy of his first place medal bearing the logo of the New York Arm Wrestling Association.

We find that the preceding award is reflective of local recognition, rather than national or international recognition.

The petitioner submitted four additional certificates originating from Armenia.

1. A diploma issued on November 15, 2002 by the “Head of the Department of Physical Training” of the Yerevan State Economic Institute (YSEI) states that the petitioner became “an overall champion of arm wrestling by the student sport games program of the of the Yerevan State Economic Institute.”
2. A diploma issued on April 20, 2002 states that the petitioner won “the Championship of the RA Armwrestling Youth Competition of 2002” in the weight category of 75 kilograms with the left arm.
3. A diploma issued on October 28, 2001 by the “President of the \_\_\_\_\_ Council” states that the petitioner won “the \_\_\_\_\_ Armwrestling Republican State Tournament . . . in the weight category of +70 kg with the left arm.”
4. A diploma issued on October 29, 2000 by the “President of the \_\_\_\_\_ Council” states that the petitioner won “the \_\_\_\_\_ Republican State Armwrestling Tournament in the weight category of 75 kg with the left arm.”

Items 1 and 2, the most recent of the four certificates, were for a “student” and a “youth” competition. It is reasonable to conclude that items 3 and 4, since they were issued prior to items 1 and 2, were also for youth competitions. In regard to awards from youth or student competitions, we note that the petitioner faced competition only from his approximate age group rather than from throughout the entire field. We note here that older, professional arm wrestlers are ineligible for consideration for such “youth” awards. For this reason, we cannot conclude that winning a “youth” award elevates the petitioner to the very top of his sport. The petitioner must show that he has earned national or international awards when competing at the highest level, rather than competitors limited to his own age group. Finally, there is no supporting evidence showing

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<sup>1</sup> Another copy of this certificate included in the record has the petitioner’s first and last name handwritten into the blank space.

that the above diplomas are reflective of national recognition, rather than statewide or institutional recognition.

In response to the director's request for evidence, the petitioner submitted a copy of the November 13, 2003 results listing the "Empire State 'Golden Arm' Champions." According to the results, the petitioner won the "150 lb. Lightweight Class." This evidence came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Aside from the issue of the date that this evidence came into existence, we note that this victory was reflective of statewide or regional recognition, rather than national or international recognition.<sup>2</sup>

We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that the awards presented under this criterion enjoy significant national or international stature. In this case, the record contains no evidence establishing that the petitioner's awards are nationally or internationally recognized.

*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 petitioner submitted a letter from the President of the Armenian Armwrestling Federation stating: "[The petitioner] (born on February 9, 1984) had been a member of the Armenian National Armwrestling Team and during 2000-2003 was training at the gym of Armenian Armwrestling Federation." The letter contains no further information. There is no evidence showing that this organization required outstanding achievement of team members, as judged by national or international experts.

*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.

The petitioner submitted photographs reflecting local media publicity associated with the competitions in which has participated, but there is no evidence showing that the petitioner himself was the primary focus of any significant media attention. We note here that the plain wording of this criterion requires "published materials about the alien in . . . major media." In this case, the record contains no qualifying published articles about the petitioner's arm wrestling accomplishments.

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<sup>2</sup> All nine winners of this competition came from the tri-state region consisting of New York, New Jersey, and Connecticut.

On appeal, counsel cites the regulation at 8 C.F.R. § 204.5(h)(4) and notes that “comparable evidence may include expert opinion letters attesting to the applicants [sic] abilities.” Counsel does not explain how the one testimonial letter in this case constitutes “extensive documentation” of sustained national acclaim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to his field. The petitioner’s appellate submission fails to address this issue. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise.” Subsequent to his arrival in June 2003, there is no evidence showing that the petitioner’s primary occupation and source of income in the United States involves professional arm wrestling (rather than employment in some unrelated occupation).

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. The petitioner has failed to demonstrate receipt of a major internationally recognized award, or 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 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 the 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.