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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 14 2006
WAC 03 023 55094

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)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based preference visa petition. In connection with the petitioner's Application to Register Permanent Residence or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition. In a Notice of Revocation, the director ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Id. (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). Finally, the approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, the counsel submits a brief that mostly reiterates previous assertions and resubmits evidence. **Ultimately, we concur with the director. In general, the evidence suggests that the petitioner's field is exceedingly small. Ranking at the top of a field of one is meaningless. While the petitioner's field is not a field of one, the extremely small number of professional and even amateur competitors somewhat diminishes the significance of her accomplishments for the reasons discussed below.**

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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a bodybuilder. 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 that, she claims, meets the following criteria.¹

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

In 1995, the petitioner, from [REDACTED], won first place in her class and third overall at the 1995 Clasico Mr. Mexico and Ms. Perfection. A flier identifies the petitioner as Miss Perfeccion 1997. This win was covered in the local section of a Queretaro newspaper. In 1998, the petitioner competed at the 13th Iberoamericano Championships in Guatemala where an article, according to an incomplete translation,

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

reports that she won in her class and overall. The first place plaque, however, does not list the name of the winner. The record does not reveal how many women competed in this competition. According to the same translation, this win allowed the petitioner to begin competing professionally. Another partial translation of an article in an unknown newspaper states the petitioner's win of the "Luchador Olmeca," reported to reward the best Mexican sportswoman.

Once she began competing professionally, the petitioner finished eighth out of ten in the 2000 Jan Tana Classic, fourth out of four in her class at the 2001 Extravaganza Pro Bodybuilding sponsored by the International Federation of Body Building (IFBB), fourth out of six in her class at the 2001 Jan Tana Classic, third out of seven in her class at the 2002 Southwest USA Women's Pro Cup, and sixth out of an unknown number in the 2002 Jan Tana Classic. Only the first place finishers qualify to compete at Ms. Olympia and the record does not establish whether the second and third place finishers receive an actual "award" or "prize."

The director concluded that the petitioner sought entry as a professional bodybuilder and, thus, must demonstrate professional awards or prizes. The director further concluded that one such award was insufficient.

On appeal, counsel asserts that the petitioner has won more than one nationally or internationally recognized prize or award. Given the extremely limited size of women competing in IFBB competitions from around the world and the fact that the petitioner is only the second woman from Mexico to turn professional, it is reasonable to question the number of competitors for Miss Perfection in Mexico. As stated above, the petitioner has not demonstrated that the competitions were even covered by any major media in Mexico. The record also lacks evidence regarding the significance of the Iberoamericano competition. Not every competition that has competitors from more than one country is internationally recognized. The record contains no major media coverage of this event and the plaque does not even include the petitioner's name.

While some references have stressed that the petitioner has finished in the top five or six in IFBB competitions, the record reveals that only 23 or 24 women total competed in all professional classes in these competitions and only between ten and four competed in the petitioner's class in some competitions. The record lacks evidence that large numbers of professionals were eliminated in qualifying competitions. Rather, these competitions appear to be the qualifying competitions for the Ms. Olympia competition. We note that in *Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm. 1994), the AAO found significant that the alien in that case had an all-around ranking of 10th among 10,000 professional golfers worldwide and 600 in the PGA tours.

The petitioner has not established that she has won awards or prizes in a field with a significant pool of potential competitors. Thus, we cannot conclude that the petitioner meets this criterion.

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 relies on her professional membership in IFBB to meet this criterion. She submitted IFBB's constitution, which provides:

9.2 Direct Membership:

Although the IFBB shall not offer direct individual membership, members of National Federations, by virtue of their acceptance into the IFBB family, agree to be bound by the Constitution or Rules.

9.3 Membership by Association:

Athletes, judges, administrators, and other officials become Members of the IFBB by virtue of their association with their National Federation pursuant to the terms and conditions as set out in the constitution and rules of the respective National Federation.

The director concluded that since membership in IFBB is based on membership in a National Federation, the petitioner must provide evidence of the membership criteria for the National Federation of which she is a member.

On appeal, counsel discusses the prestige of the IFBB and asserts that the petitioner is only one of two Mexican women who compete professionally. While a large number of members suggests that an association is not exclusive, we will not presume that every association with a small number of members is sufficiently exclusive to meet this criterion. The petitioner has still not provided the actual membership criteria for the National Federation of which she is a member. Without that information, we cannot determine whether that membership requires outstanding achievements as judged by national or international experts.

Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) provides:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Thus, the mere fact that the petitioner competes professionally is insufficient to establish her eligibility for the classification sought.

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 director concluded that the petitioner meets this criterion. We acknowledge the copious published materials in the record. Many of the articles that focus primarily on the petitioner, however, are in a foreign language. According to the regulations at 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii), the petitioner must provide complete and certified translations for all foreign language documents, including published materials. Some of the translations submitted are incomplete. Moreover, the petitioner failed to submit evidence of the circulation for any of the publications that have covered her, as opposed to those publications that merely report the results of competitions where she competed. Finally, we acknowledge that photographs of the petitioner appear on numerous Internet websites devoted to female bodybuilders. The petitioner has not established the significance of these sites. National or international exposure is not necessarily the same as acclaim. Thus, the petitioner has not satisfied her burden of demonstrating that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Initially, counsel asserted that the petitioner's awards and "mere presence" at bodybuilding competitions generated "vast amounts of financial backing for the sport." Counsel further asserts that the petitioner "will" have an opportunity for sponsorship deals. Finally, counsel quotes from the petitioner's reference letters. The director concluded that the petitioner had not demonstrated that her achievements were "original" or contributions of major significance. The director further concluded that the record did not support counsel's assertion that bodybuilding had benefited financially from the petitioner as there was no evidence that the \$20,000 generated by the petitioner's video had gone to the sport. Finally, the director concluded that the petitioner had not demonstrated that the sport had been impacted as a result of her activities. On appeal, counsel reiterates previous assertions and fails to address the director's concerns. At the end of the brief, counsel cites *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995) for the proposition that reference letters are often the best evidence of acclaim.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. While *Muni v. INS*, 891 F. Supp. at 440, does use the language noted by counsel, the alien in that matter was the starting defenseman for an NFL Hockey Team that won the Stanley Cup three times. Thus, he was hardly just relying on witness letters.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the

benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of bodybuilding, it can be expected that the petitioner would have demonstrably impacted the field.

Some of the letters are from photographers and operators of websites that feature female bodybuilders. [REDACTED], a professional photographer with Physique Art, Inc., asserts that he became aware of the petitioner through magazine coverage of her accomplishments and has worked with her. Mr. [REDACTED] praises the petitioner's accomplishments, but does not assert that the petitioner has impacted the field of bodybuilding. [REDACTED] another photographer, asserts that he visited the petitioner's website and now features the petitioner on his own website dedicated to female bodybuilders. He praises the petitioner's accomplishments, noting that she placed "in the top five" in prestigious competitions. His failure to acknowledge that these competitions had barely more than five competitors in the petitioner's class somewhat diminishes the evidentiary value of his assertions. Regardless, Mr. [REDACTED] does not assert that the petitioner has impacted the field of bodybuilding. The remaining photographer letters are similar, further asserting that she is in great demand by website photographers.

[REDACTED] President of the Mexican Federation of Bodybuilders, chronicles the petitioner's career and concludes that it is "clear" that the petitioner is "a role model and a great motivation to many bodybuilders in Mexico and around the world." Mr. [REDACTED] points to no facts that would support his assertions, such as evidence that the number of amateur female bodybuilders has increased by a statistically significant number since the petitioner began competing successfully.

Producer and Owner of Fast Twitching Video, asserts that his video of the petitioner posing in various outfits is one of his “highest grossing titles” that has sold between 800 and 1,000 copies worldwide and grossed approximately \$20,000. We concur with the director that the record lacks any evidence that would suggest that the sales of this video, which is not an exercise or fitness video, has contributed to the finances of the sport of bodybuilding.

a founding editor of *FLEX Magazine*, asserts that he has photographed and interviewed the petitioner. He asserts that the prevailing culture in Mexico is not sympathetic to female bodybuilders, making her achievements all the more notable. He does not assert, however, that the petitioner has impacted the field in Mexico such that more women are now participating in the sport.

General Manager of Gold’s Gym in Venice California, asserts that the petitioner is an “outstanding ambassador for the sport.” Once again, the record lacks evidence that the petitioner’s participation in the field has promoted a statistically significant rise in participation by other women.

Finally, two other female bodybuilders reiterate the petitioner’s achievements, with little explanation as to how her achievements are “original” or constitutes “contributions of major significance.” The petitioner also submitted letters from IFBB officials and talent agents providing similar information.

Even considering the above praise, the petitioner has not established that her ability to remain competitive in her field constitutes an original contribution of major significance to her field.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.

Counsel has continuously maintained that the petitioner’s appearances at competitions are displays of her “art,” namely her body. The director rejected this reasoning, asserting that the record establishes that the petitioner’s field is athletics, not visual arts. The director determined that the competitions were competitive sporting events, not artistic exhibitions. On appeal, counsel continues to assert that the petitioner’s “unique body is her work.” Counsel continues:

The [director] states that Petitioner cannot satisfy this criterion by changing the wording to fit her need since a bodybuilding competition is an athletic event, not an artistic exhibition or showcase. The [director] makes these claims however without any proof that this is correct. In fact, bodybuilding is distantly related to the medieval carnival feat of strength.

Counsel then concludes that bodybuilding focuses on the classic body that was on display in art during the Renaissance. Counsel references a German bodybuilder who “displayed” his mostly nude body and sold books and magazines in the 1890’s on the shapely body.

The petitioner submits materials from the Internet Encyclopedia of Gay, Lesbian, Bisexual, Transgender and Queer Culture discussing the emergence of bodybuilding as “entertainment.” The

article notes the display of bodybuilders at carnivals. The article concludes by discussing the emergence of bodybuilding as a sport. The article notes that in bodybuilding sports competitions, the contestants lift weights off stage and the “show” was the “pump” derived from the exercise of muscle.

The plain language of the regulation references “artistic exhibitions or showcases.” The director’s decision relies on this unambiguous language. We reject counsel’s implication that the director must offer “proof” in order to rely on this language. Rather, it is the petitioner’s burden to demonstrate why we should deviate from the plain language of the regulation.

We are not persuaded that the inclusion of bodybuilders at carnivals transforms the petitioner’s sport into an art. Moreover, just as every artist able to make a living in her field must display her work at some level, professional bodybuilders must compete in order to make a living in their field. The petitioner has not established that her participation in competitions compares to the exclusive showcases of an artist’s work that is contemplated by this regulation for visual artists.

Significantly, the statute requires the submission of extensive evidence. The regulations require that an alien meet three separate criteria. These requirements would be meaningless if we concluded that the petitioner’s participation in professional competitions constitutes awards, exclusive memberships, original contributions of major significance and artistic displays as urged by counsel.

Ultimately, we concur with the director that the petitioner’s entry into bodybuilding competitions cannot be considered equivalent to exclusive showcases of a visual artist’s work.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

While the petitioner has never claimed to meet this criterion, we note the submission of evidence that the petitioner appears in a Fast Twitching Video production, “The [petitioner’s name] Video.” The cover for the video does not suggest that it is a fitness video. Rather, the petitioner merely poses in various outfits. As stated above, Mr. ██████ asserts that the petitioner’s video is one of his highest grossing titles, has sold between 800 and 1,000 copies and has generated \$20,000 in sales. The director noted the lack of official sales data to support Mr. ██████’s assertions. Counsel does not respond to this concern on appeal. We concur with the director that sales of between 800 and 1,000 worldwide are not indicative of commercial success. Regardless, the petitioner is an athlete, not a performing artist. Thus, it is not clear that this criterion is applicable to her 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 herself as a competitive athlete to such an extent that she may be said to have achieved sustained national or

international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a bodybuilder, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.