

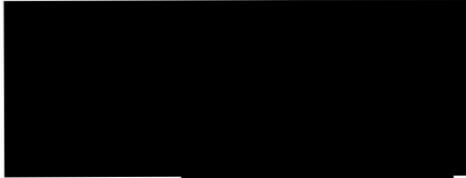


U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 04 064 53580

Office: VERMONT SERVICE CENTER

Date: MAR 29 2006

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:



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.

Σ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision for the AAO will be affirmed, and the petition will be denied.

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 and the AAO previously determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability, or that he would work in his area of extraordinary ability.

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 motion, counsel does not dispute the AAO's finding that neither of the petitioner's third place finishes at the 2003 U.S. Go Congress or in the "Eastern Division" at the 2004 American Toyota/Denso Oza Championship constitute a major, internationally recognized award. We note that the petitioner's third place divisional award at the American Toyota/Denso Oza Championship in 2004 occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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. The level of acclaim and recognition associated with the petitioner's awards fall well short of that required by the regulation. The petitioner's awards will be further addressed below as "lesser nationally or internationally recognized prizes or awards."

Barring the alien's receipt of a major, internationally recognized 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.

In its prior decision the AAO concluded that the petitioner's third place at the 2003 U.S. Go Congress open competition adequately satisfied this criterion. Counsel's arguments on motion regarding the petitioner's third place finishes in the Eastern Division at the Second North American Toyota/Denso Oza Championship in 2004 and the New Jersey Go Open are largely irrelevant because the AAO has already concluded that this criterion has been met.

Regarding the petitioner's third place in the Eastern Division at the Second North American Toyota/Denso Oza Championship in 2004, it has already been noted that this event occurred subsequent to the petition's filing date. *See Matter of Katigbak* at 45, 49.

Regarding the petitioner's third place finishes at the New Jersey Open Go Tournament in 2002 and 2003, counsel asserts that that this competition is a nationally recognized event. Counsel further states:

We contend that whether an event is a nationally recognized event is simply not determined by the event's name but by other factors including origins of its actual participants, sponsorship, organizer and prestige of the event with the community of participants. Boston Marathon, for example, is not a regional competition. . . . New Jersey Go Open is not a regional competition. We have previously submitted documentation concerning the New Jersey Go Open showing that it is an event sponsored by the AGA [American Go Association] open to Go players regardless of their residence with actual participation of Go players who are not residents of New Jersey. These documents need to be considered.

While counsel's motion does not specifically identify the documents that establish that the New Jersey Open Go Tournament is "a nationally recognized event," counsel's appellate brief dated January 6, 2005 stated:

The New Jersey Go Open is organized and sponsored by the American Go Association. As with all AGA sponsored tournaments, New Jersey tournament is open to all Go players not only in New Jersey but also in other states and countries. . . . We now enclose tournament calendar as listed on the AGA website to show that all AGA sponsored tournaments are open to all Go players in the United States. Exhibit V. In addition, we are also enclosing documentation that Go players participating in the New Jersey Go Open are residents of other states in the country. For example, [REDACTED], the champion of the 2003 New Jersey Open is from Maryland. Exhibit W.

We note, however, that Exhibit V, the "Open Tournament and Workshop Calendar" listing from the AGA's website, did not include the New Jersey Go Open. Exhibit W, page 37 of the Spring 2003 issue of the *American Go Journal*, includes a listing of tournament results for various competitions held in January, February, and March of 2003. Under the heading "New Jersey Open," it states: "85 registered players, including young players from the [REDACTED] school. Organized and directed by [REDACTED] and [REDACTED]. [REDACTED] NEW JERSEY STATE CHAMPIONSHIP: co-champions [REDACTED] equal 3rd-4th: [the petitioner] (7d), [REDACTED]" We find it interesting that the names of [REDACTED] and the petitioner appear under the "NEW JERSEY STATE CHAMPIONSHIP" category [emphasis added]. If this competition were truly national as counsel claims, it is not apparent as to why the words "STATE CHAMPIONSHIP" appear before the listing of winners. Counsel's assertion that the preceding documentation shows that "the New Jersey Open Go Tournament is . . . a nationally recognized event" is far from persuasive. Further, counsel's assertion that [REDACTED] is a resident of Maryland is not supported by evidence. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if we were to accept counsel's claim that [REDACTED] is a Maryland resident, there is no evidence showing that a substantial number of the 84 other registered "players participating in the New Jersey Go Open are residents of other states in the country" (as claimed by counsel). Thus, it has not been shown that a victory at the New Jersey Go Open reflects national recognition rather than regional recognition.

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.

On motion, the petitioner submits a letter from _____ President of the American Go Association, who states:

The American Go E-Journal published by AGA is the most popular Go related publication in the United States today. Its world-wide circulation is more than 7,000. There are over 2,000 current members of the AGA and as with other sports, a hundred times that many non-member players. The circulation of our twice weekly journal is greater than any other Western publication on Go. There is no other Western produced Go related publication that has nationwide circulation in the United States.

Counsel asserts that “the American Go Journal is a major trade publication and the articles in the ‘Score Board’ Section are related to the petitioner’s Go playing.” Counsel incorrectly uses the term “articles” to describe the data appearing in the “Scoreboard” section. The Scoreboard section of the Spring 2002 and Spring 2003 printed issues of the *American Go Journal* consist of multiple listings of various Go tournament results rather than articles about the petitioner (more than 150 other Go player names are listed in the same manner as that of the petitioner). We further note that the information provided by _____ relates to current issues of the *American Go E-Journal* rather than the Spring 2002 and Spring 2003 printed issues of the *American Go Journal*. Assuming we were to accept that both journals qualify as “major trade publications or other major media,” counsel has not addressed the following deficiencies cited in the AAO’s October 21, 2005 decision:

The petitioner . . . submitted local tournament results published in the “Scoreboard” section of the Spring 2002 and Spring 2003 issues of *American Go Journal*.¹ Among these results, the petitioner is listed as placing third twice at the “New Jersey State Championships” (page 44 of the Spring 2002 issue and page 37 of the Spring 2003 issue). Clearly the petitioner is not the primary subject of material presented. We cannot ignore that numerous other Go players from various tournaments around the country are similarly listed in the Scoreboard section. Winning a state tournament is not evidence of national or international acclaim. In addition, in the “Ratings” section of the Spring 2003 issue (page 45), the petitioner is listed as the 12th ranked player according to data compiled by the journal’s ratings editor and American Go Association statistician. Simply having one’s name listed in this manner does not constitute qualifying “published material about the alien.” In the preceding instances, the material does not single out the petitioner from the other amateur players listed, nor does it offer any substantive discussion about his extraordinary achievement or national acclaim as Go player.

Counsel further states: “The AGA Annual report for 2003 and AGA website listings are major trade publications since they are published online by the official and only national Go association in the United States and the information published is readily available to the public.” This material, which is not the result of independent journalistic reportage, cannot serve to meet this criterion. Simply having one’s name listed online is not

¹ This section of the journal posts the results for local Go tournaments such as the “Pennsylvania Open” and the “Denver Fall Open.”

evidence of national or international acclaim. The record includes no evidence showing that the petitioner was the primary subject of the material, nor is there evidence showing the number of website hits that the petitioner's online postings received. Regarding the AGA Annual Report for 2003 and the AGA website listing, the AAO previously stated:

The petitioner submitted the 2003 Annual Report for the American Go Association which states (at the bottom of page nine) that the petitioner will chair the "Ing Grant Management" Committee. The 2003 Annual Report is about the association's financial status rather than the petitioner or his individual achievements as a Go player. Furthermore, we cannot ignore that the petitioner seeks classification as a "Go player" not as a financial grant manager.

Counsel asserts that an American Go Association website listing the petitioner "as the Chairman of Ing Fund Management" should also be considered under this criterion. Inclusion on a list of approximately 30 officers and volunteers of the American Go Association is not qualifying "published material about the alien." If the petitioner himself is not the primary subject of the material, then it fails to demonstrate his individual acclaim.

We cannot conclude that the petitioner's evidence meets this criterion.

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.

The petitioner initially submitted a December 18, 2003 letter from [REDACTED] Principal, [REDACTED] School, Piscataway, New Jersey. She states: "[The petitioner] . . . served as Judge for Youth Group at 1st [REDACTED] Go Tournament." Aside from this single sentence, the December 18, 2003 letter provides no further information regarding the above "Youth Group" competition.

On appeal, the petitioner submitted a second letter from [REDACTED], dated December 21, 2004, who identified herself this time as a "9-dan Professional Go Player." She states:

I would . . . like to certify that [the petitioner] served as a referee for the First [REDACTED] Youth Go Tournament, a national competition organized by me and named in my name. This competition is a national competition and is the only one of its kind in the United States. The level of competition represents the highest among young Go players in the country. I also certify that all the referees for this competition are top Go players in the United States and [the petitioner] was chosen as a referee because he is one of the best in the country.

In addressing the December 21, 2004 letter from [REDACTED], the AAO's prior decision stated:

The record, however, contains no evidence to support [REDACTED]'s assertions. For example, national level competitions typically issue event programs listing the order of events, the names of all of the participating players, the teams or locations which the players represent, and their competitive rankings. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors. The petitioner, however, has provided no such evidence to support

assertions in regard to the First [REDACTED] Youth Go Tournament. Furthermore, there is no evidence showing that this competition fielded a significant number of top Go players from throughout the U.S. (rather than mostly local youths from New Jersey). Nor is there supporting evidence listing the other referees and their respective Go rankings. We cannot ignore the statute's demand for "extensive documentation" of sustained national or international acclaim. **We note the absence of published material or national publicity surrounding the First [REDACTED] Youth Go Tournament.** Evidence in existence prior to the preparation of the petition is of greater weight than letters of support prepared especially for submission with the petition. Without contemporaneous evidence showing that the tournament involved top players from throughout the country (rather than local children), we cannot conclude that the petitioner meets this criterion. Furthermore, we note that the petitioner claims eligibility under this criterion based on his refereeing of only one youth tournament. The statute and regulations, however, require the petitioner's acclaim to be sustained. We find that the petitioner's limited and recent referee activity is not indicative of sustained national or international acclaim.

On motion, counsel states: "The AAO's finding that the petitioner did not provide a list of other judges and their Go rankings in the same competition as one of the reasons for dismissing the petitioner's claim concerning this issue has no legal basis in the statute or regulations." In this instance, the AAO was simply responding to [REDACTED]'s assertion "that all the referees for this competition are top Go players in the United States." There was no supporting evidence identifying the names of these referees or statistical data showing their top national rankings. Counsel appears to have overlooked the requirement under section 203(b)(1)(A) of the Act requiring "extensive documentation" of sustained national or international acclaim. As noted in the AAO's prior decision, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "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."

Counsel further states:

To summarily dismiss [REDACTED] own written statement verifying the scope of the competition and the petitioner's participation in the competition as a judge is something that is very difficult to understand, especially when one considers the fact that even a past employer's written verification concerning an alien's past employment with that employer is generally accepted as conclusive evidence of the past employment.

[REDACTED] written statement and the petitioner's participation in her tournament as a referee for the youth competition were properly evaluated in terms of the relevant statute and corresponding regulations. The regulations governing the present immigrant visa determination have no requirement mandating that Citizenship and Immigration Services (CIS) specifically accept the credibility of personal testimony, even if not corroborated. The regulations provide that eligibility may be established through a one-time achievement or through documentation meeting at least three of ten criteria. The commentary for the proposed regulations implementing this statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (1991). The regulatory criteria require specific documentation beyond mere testimony.

On motion, counsel cites Exhibit V, the “Open Tournament and Workshop Calendar” listing from the AGA’s website, dated January 8, 2005, as evidence “that the [redacted] Youth Go Tournament is acknowledged by the AGA as one of the major Go competitions in the United States.” The evidence submitted by the petitioner does not support this assertion. First, the 2005 “Open Tournament and Workshop Calendar” lists the “3rd [redacted] Go Tournament” rather than the “First [redacted] Youth Go Tournament” [emphasis added] in which the petitioner served as a referee. Second, there is no indication that the twenty other events listed under the “Open Tournament and Workshop Calendar” all represent national level competitive events. According to information immediately following the “Open Tournament and Workshop Calendar” listing, it appears that anyone interested may register a tournament or workshop on this part of the AGA website. There is no indication that only national level competitions are publicized and that local events are excluded from this section. The 2005 event calendar listing states: “Planning a Go Tournament or Workshop? GET LISTED! There is no charge for a listing on this Web page. Your tournament will be publicized here.”

Most importantly, counsel does not address the AAO’s finding that the petitioner evaluated amateur youth rather than competition at the highest level of his sport. We find that refereeing a national Go competition involving professionals at the national level (such as the national finals of the American Toyota/Denso Oza Championship) is of far greater probative value than refereeing an amateur competition involving children such as a local “youth” tournament in New Jersey (as in the present case). The petitioner has not submitted evidence identifying the names, rankings, and competitive categories of the individuals he refereed. Without contemporaneous evidence showing that the petitioner refereed top Go players from throughout the country (rather primarily local children from New Jersey), we cannot conclude that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence of a seven-sentence game commentary posted in the April 14, 2003 version of the *American Go E-Journal*.

The commentary states:

Black 19 is slow. Black’s intention is to cut at G5 if White answers 19 at F2, which will provide a better result than the normal sequence. See variation. After White 54, White starts to get control of the game since now Black has two separate groups in White’s moyo to worry about. White 148 is a good move at this moment. It has the cut at L8 or the connection at N10 to invade Black’s center moyo. Black resigns after White 192.

On motion, counsel states: “The simple fact that the alien’s commentary is published in the most popular and only Western publication on Go in the United States shows the significance of the petitioner’s publication.”

Assuming we were to accept that the *American Go E-Journal* qualifies as a “major trade publication or other major media,” counsel has not addressed the AAO’s finding that one brief game commentary constitutes “authorship of scholarly articles.” We note here that the petitioner was commenting about his own play and that his self-commentary was edited by Bill Cobb and Chris Garlock. There is no evidence showing that the petitioner’s online commentary attracted substantial national or international interest, or that posting an on-

line game commentary about one's self demonstrates sustained national or international acclaim in the sport. We cannot conclude that the petitioner's evidence meets this criterion.

In view of the foregoing, we again find that the evidence satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). 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 national or international acclaim necessary to qualify as an alien of extraordinary ability.

Beyond the preceding criteria, counsel states that the petitioner's 12th ranking as a Go player and his letters of support from past and current officials of the American Go Association constitute other comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). As stated previously, this regulation 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 the alien's field. Of the ten criteria, more than half readily apply to the petitioner's sport. 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.

In addition to finding that the petitioner had failed to satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the AAO's prior decision stated:

As noted by the director, section 203(b)(1)(A)(ii) of the Act requires that "the alien seeks to enter the United States to continue work in the area of extraordinary ability." The petitioner's intention to continue playing Go is not in dispute; the record shows that the petitioner has recently participated in various competitions. More relevant is the issue of whether employment as a Go player will be the petitioner's primary occupation and source of income. Because the petitioner seeks an employment-based immigrant classification based on his Go playing skills, it is reasonable to require evidence that the petitioner has been and will continue to support himself principally as a Go player through competitive prize money (rather than competing in his spare time while supporting himself through unrelated employment). We cannot ignore the substantial evidence indicating that there are a number of professional Go players in the United States who earn significant sums of prize money at both the national and international level.² Furthermore, in a December 30, 2003 letter accompanying the petition, counsel observes: "Millions of dollars in prize money change hands every year." In this matter, it should be emphasized that the petitioner seeks an employment-based visa. The evidence of record fails to show that the petitioner has been and will continue to support himself primarily through his skills as a Go player.

On motion, counsel states: "We do not think that the word "work" should be narrowly interpreted as implying primary occupation or source of income *only*." [emphasis added] Counsel misstates the AAO's findings. Counsel has changed "principally" and "primarily" to "only," thereby refuting an observation that the AAO did not make in its prior decision.

² For example, according to Exhibit I of the appellate submission, [redacted] and [redacted] are the North American representatives to the 2nd Toyota/Denso North American Oza Tournament and will play for \$300,000 and a new Lexus."



Counsel compares the petitioner's situation to that of a "world class swimmer in the United States, a long distance runner, a cyclist, an archer, or a member of the U.S. women's softball team," stating: "It is hard to believe that all of these athletes could support themselves with their talent and ability in their respective sport *only* and yet a reasonable person would agree that they are continuing work in their fields of endeavor as long as they are performing in their top athletic ability." [emphasis added] Once again, counsel's use of the word "only" misstates the AAO's prior findings.

Counsel's argument is not persuasive. We find that top athletes outside of major league sports do still make a living in their field through prize money and endorsements (such as marathon runners and cyclists). Counsel has not provided the specific names of athletes whose situations would support the conclusion that top national athletes are unable to support themselves financially through their sport, nor does he provide any official statistics or media citations in support of his assertion. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena* at 533, 534; *Matter of Laureano* at 1; and *Matter of Ramirez-Sanchez* at 503, 506.

We cannot ignore the plain language of the Section 203(b) of the Act, which states: "Preference Allocation for Employment-Based Immigrants. - Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas" Counsel has cited no statute, regulation, or standing precedent to support the conclusion that the term "work," in the statute, is divorced from the term "employment," which also appears in the statute. The visa classification sought by the petitioner is for "employment" in the United States rather than for recreational pursuits. The statute requires that the petitioner be seeking to enter the United States to continue to "work" in the area of extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(5) requires evidence of an intent to continue working in the petitioner's area of expertise, such as letters from prospective employers, prearranged commitments or a statement from the petitioner detailing his plans to work in his field. The record includes no such evidence. Although prize money is available in his field, the petitioner submits no evidence showing that he has ever earned any prize money since coming to the United States in 1997. There is no indication that the petitioner will "work in the area of extraordinary ability" rather than supporting himself through employment in an unrelated occupation. Thus, the petitioner has not established his ability to make a living by playing Go. Once again, we find that the petitioner's evidence fails to satisfy the statutory requirement at section 203(b)(1)(A)(ii) of the Act.

In this case, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i) and (ii) of the Act. As the evidence and arguments presented on motion do not overcome the grounds for the previous decision of the AAO, and it has not been shown that that decision was based on an incorrect application of law, the previous decision of the AAO will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The AAO's decision of October 21, 2005 is affirmed. The petition is denied.