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U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 06 090 52069

Office: VERMONT SERVICE CENTER

Date: DEC 18 2007

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:

SELF-REPRESENTED

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, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 petitioner asserts that he was a professional coach in Turkey and submits evidence of that employment through 1985. For the reasons discussed below, the petitioner has not overcome the grounds of denial, set forth in the notice of intent to deny and incorporated by reference into the final denial notice.

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 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 boxing coach. 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 the following 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.

- (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 material 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 specialization 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.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

Initially, the petitioner submitted his certification as a district arbitrator dated May 5, 1979 and evidence that he earned his trainer (coach) diploma on September 19, 1984. On June 27, 2006, the director issued a notice of intent to deny advising the petitioner of the ten criteria and concluding that the record lacked substantial documentation of acclaim. The petitioner did not respond. Thus, the director concluded that the petitioner had failed to overcome the lack of evidence noted in the notice of intent to deny.

On appeal, the petitioner submitted a certification from the Director of Youth and Sport for Giresun Province in Turkey. The certification states that the petitioner worked in an "honorary" capacity from 1978 through 1982 and as a "permanent" staff member from 1982 through 1985 with "Director of Youth and Sport Boxing Trainer coach duty." The certification further states that the petitioner engaged in "joint official sport contest with his team." The certificate then includes a list of competition results from 1979, 1980, 1981, 1983 and 1986. The result from 1986 appears to relate to one of the petitioner's students, although it is unclear if the petitioner was the student's coach at the time of the student's third place national team finish in 1986 as the certification only confirms the petitioner's coaching duties through 1985. The certification does not explain the petitioner's connection to the remaining results. The petitioner provides no explanation for his failure to respond to the director's notice of intent to deny.

The statute requires *extensive documentation* of sustained national or international acclaim to establish eligibility for this classification. Section 203(b)(1)(A)(i) of the Act. Assuming that the beneficiary is a talented trainer/coach who has worked professionally, the record does not reflect that he has attained any national acclaim for that talent. Specifically, the petitioner has not demonstrated that he has won any nationally or internationally recognized awards or prizes or that his students have done so while primarily under his tutelage. Thus, he has not demonstrated that he meets the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i). The petitioner has not demonstrated that his position as a coach or arbitrator for a provincial youth association was leading or critical or for an entity with a nationally distinguished reputation. Thus, he has not demonstrated that he meets the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii). In addition, it is inherent to the job of coach to evaluate one's students. Thus, such duties do not set the petitioner apart from any other coach and cannot serve to meet the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). Without evidence regarding the responsibilities of an arbitrator, we cannot conclude that these responsibilities serve to meet the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). The record contains no evidence relating to any other criterion and, as stated by the director, lacks the "extensive evidence" of acclaim mandated by the statute. Section 203(b)(1)(A)(i).

Finally, as stated above, the petitioner must demonstrate *sustained* national or international acclaim. The record contains no suggestion that the petitioner worked as a coach after 1986 or that he sustained any acclaim he may have enjoyed in the early 1980's at the time the petition was filed in February 2006.

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 boxing trainer/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. Therefore, the petitioner has not established his eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In addition to the grounds raised by the director, the petitioner has also failed to demonstrate that he is coming to the United States to continue working in his area of expertise. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997; 1002 n. 9 (2d Cir. 1989).

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The record contains no evidence regarding the petitioner's prospective employment. As noted above, the petitioner has not demonstrated any employment in his claimed area of expertise since 1986, 20 years prior to the filing of the petition. Thus, it is not clear that he even remains qualified to resume employment in this area.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.