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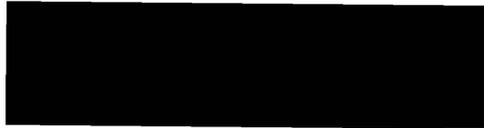
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: EAC 06 046 50381 Office: VERMONT SERVICE CENTER Date: JAN 08 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.

Σ Robert P. Wiemann, Chief
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 (AAO) 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.

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

This petition, filed on November 28, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a competitive Sambo athlete.¹ In a March 23, 2006 letter responding to the director’s request for evidence, the petitioner states that he is seeking classification as an athlete rather than as a coach: “. . . it is not true that I came to the United States for coaching. . . . I am asking the legal status as athlete and not as coach [sic].” As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3),

¹ The term “Sambo” is an acronym for the Russian phrase “Samozashchita Bez Oruzhiya” or in the English language, “Self-Defense Without Weapons.”

the petitioner must demonstrate that his national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since September 2003. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than two years), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an athlete in this country.

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.

The petitioner submitted the following fill-in-the-blank documents:

1. Award Diploma issued by the [REDACTED] stating that the petitioner won first place among "juniors" in the 90 kilogram weight class at the Georgian Championship (March 4, 2002)
2. Award Diploma issued by the [REDACTED] stating that the petitioner won first place in the 100 kilogram weight class at the Georgian Championship (March 5, 2002)
3. Award Diploma issued by the [REDACTED] stating that the petitioner won first place among "juniors" in the 100 kilogram weight class at the Georgian Championship (April 15, 2001)
4. Award Diploma issued by the [REDACTED] stating that the petitioner won first place in the 90 kilogram weight class at the Georgian Championship (March 10, 2001)
5. Award Diploma issued by the [REDACTED] stating that the petitioner won second place among "juniors" in the 82 kilogram weight class at the Georgian Championship (May 5, 2000)
6. Award Diploma issued by the [REDACTED] stating that the petitioner won second place in the 90 kilogram weight class at the Georgian Championship (April 15, 2000)
7. Award Diploma stating that the petitioner won second place among "juniors" in the 74 kilogram weight class at the Georgian Championship (June 14, 1999)
8. Award Diploma stating that the petitioner won first place among "juniors" in the 70 kilogram weight class at the Georgian Championship (March 20-24, 1998)
9. Award Diploma stating that the petitioner won first place among "juniors" in the 74 kilogram weight class at the Georgian Championship (January 18-20, 1997)

In regard to items 1 and 2, we find it unlikely that an individual would compete in two different weight classes at the same competition (the 2002 Georgian Sambo Championship). Further, we note that item 1 relates to a junior-level competition while item 2 does not specify the level of competition.

Regarding the petitioner's participation in the 2001 Georgian Sambo Championship (items 3 and 4), there is no explanation for the length of time between the two events (36 days) in which the petitioner participated at this competition. Further, the petitioner has not explained how an individual would compete in two different weight classes at the same event (the 2001 Georgian Sambo Championship). It is also noted that item 3 relates to a junior-level competition while item 4 does not specify the level of competition.

In regard to items 5 and 6, there is no explanation for the length of time between the two events (20 days) in which the petitioner participated at the 2000 Georgian Sambo Championship. Further, we find it unlikely that an individual would compete in two different weight classes at the same competition. It is also noted that item 5 relates to a junior-level competition while item 6 does not specify the level of competition.

The record includes a photocopy of a page from the petitioner's passport from the Republic of Georgia which displays the nonimmigrant visa that he used to enter the United States on September 8, 2003. According to a notation printed on his B-1 nonimmigrant visa, the petitioner entered the United States to participate in the "Lanier Canoe 2003 33rd World Championship" in Gainesville, Georgia from September 10-14, 2003. Despite his claim that he is nationally recognized for his competitive achievements in Sambo from 1997 to 2002, the petitioner's nonimmigrant visa reflects that he came to the United States in 2003 to participate in a flat-water canoe championship.

The petitioner has not resolved the aforementioned discrepancies relating to his awards and nonimmigrant visa. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

Regarding items 1, 3, 5, 7, 8, and 9, we find that winning an award at a "junior" level competition is not an indication that an athlete "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced national competition from throughout his entire sport, rather than only his approximate age group within his sport.

On appeal, the petitioner submits a fill-in-the-blank award certificate reflecting that he placed 3rd in 100 kilogram weight class at the "U.S.A. Open Sambo Championship" on June 24, 2006. The petitioner won this award 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, 49 (Comm. 1971). Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. Accordingly, the AAO will not consider the June 24, 2006 award in this proceeding.

In regard to items 1 through 9 and the 3rd place award submitted on appeal, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Large-scale competitions typically issue event programs listing the order of events and the names of the participating athletes. At a competition's conclusion, results are usually provided indicating how each athlete performed in relation to the other competitors in his or her events. The petitioner,

however, has provided no evidence of the official comprehensive results for the competitions in which he received awards. In this case, the evidence submitted by petitioner is not adequate to demonstrate that his awards are nationally or internationally recognized.

In light of the above, the petitioner has not established that he 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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the American Amateur Sambo Federation. The record, however, includes no evidence of the membership bylaws or the official admission requirements for this organization. There is no evidence showing that admission to membership in the American Amateur Sambo Federation required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner submitted letters of support from officials of the [REDACTED], the [REDACTED] and the Department of Sport for the Local Government of Kutaisi (Republic of Georgia). The petitioner also submitted a letter of support from [REDACTED] who identifies himself as a "World Sambo Champion" and professional competitor. These individuals describe the petitioner as a talented fighter and discuss his competitive success, but they fail to identify original athletic-related contributions of major significance in the field directly attributable to the petitioner. The petitioner's competitive victories have previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion which has already been addressed. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

In order to satisfy this criterion, the petitioner must show that his athletic contribution has demonstrably influenced the greater field at the national or international level. For example, holding a national or world record in one's sport (in certain instances) can constitute a major contribution since the record is something to which other athletes aspire. In this case, however, the petitioner has failed to demonstrate an original athletic accomplishment that rises to the level of contribution of major national or international significance. Thus, the petitioner has not established that he meets this criterion.

In conclusion, we concur with the director's finding that the petitioner has failed to demonstrate his 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.

Beyond the decision of 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." Further, 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. 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 petitioner's intention to continue competing is not in dispute; the aforementioned letters of support state that he has trained for upcoming Sambo competitions in the United States. More relevant is the issue of whether employment as a competitive Sambo athlete will be the petitioner's primary occupation and source of income. Because the petitioner seeks an employment-based immigrant classification based on his athletic skills, it is reasonable to require evidence that he has been and will continue to support himself principally as an athlete (rather than competing in his spare time while supporting himself through unrelated employment). In this case, the evidence of record fails to show that the petitioner (who has resided in the United States since September 2003) has been and will continue to support himself primarily through his skills as an athlete.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.