



U.S. Citizenship
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FILE:

EAC 05 230 50499

Office: VERMONT SERVICE CENTER

Date: **MAY 27 2008**

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.

Maura Deadnck
for 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.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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, filed on August 16, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a bodybuilder, weightlifter, trainer, and coach. Part 5, item 3 of the Form I-140, Immigrant Petition for Alien Worker, identifies the petitioner's occupation as "Retired Indian Navy Lieutenant." Part 6, item 4 of the Form I-140, "Address where the person will work," was left blank. Regarding the petitioner's plans for employment in the United States, counsel states:

[The petitioner's] plans for continued work in the area of coaching and training will be to initially provide services at various gymnasiums, like Goldman's Gym in Hicksville, NY and to then branch off by establishing his own gym under the Goldman's Gym franchise or to establish a gym as a sole proprietorship or partnership.

According to the petitioner's Form G-325A, Biographic Information, he has been working as an attendant at the Gibs Delta Service Station in Livingston, New Jersey since January 2006. 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." In this case, the petitioner has not submitted clear evidence establishing that he seeks to enter the United States to continue work in his area of expertise, as required by the statute and the implementing regulation. This issue will be further addressed below.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 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 evidence showing that he won national awards in the 1970s and 1980s as a bodybuilding competitor in India. For example, the petitioner earned first and second place medals in the Indian Body Building Federation's (IBBF) "Mr. India" Bodybuilding Championships. In 1996, the petitioner competed in the "50th World Amateur Championships" in Amman, Jordan and received a silver medal. There is no evidence showing the level of recognition attributable to this amateur award. Further, with regard to the awards received by the petitioner in amateur bodybuilding competition (rather than competition open to his entire field), we cannot conclude that such awards are evidence that he "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). CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.¹ Likewise, it does not

¹ While we acknowledge that a district court's decision is not binding precedent outside of the district in which the case arose, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a

follow that a competitor who has had success competing at the amateur level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

Nevertheless, according to page 6 of the August 12, 2005 letter from counsel, the petitioner is seeking work in the United States as a coach and trainer rather than as a competitive bodybuilder or weightlifter. There is no evidence showing that the petitioner, age fifty at the time of filing, remains active in athletic competition at the national or international level. The statute and regulations, however, require the petitioner’s national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a bodybuilding competitor and a coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence that the petitioner has sustained national or international acclaim through competitive athletic achievements subsequent to the 1980s or that he intends to compete as a bodybuilder here in the United States. While the petitioner’s athletic accomplishments as a bodybuilding competitor are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a coach or trainer. As such, the petitioner’s awards demonstrating his success as a national bodybuilding competitor in the 1970s and 1980s cannot serve to meet this regulatory criterion.

Nationally or internationally recognized prizes or awards won by bodybuilding competitors and weightlifters coached primarily by the petitioner, however, can be considered for this criterion. The petitioner submitted a letter of support from [REDACTED], General Secretary, IBBF, stating: “This is to certify that [the petitioner] of Indian Navy had been the coach for the Indian Navy Body Building Team for many years He has . . . trained many of the top services (Army, Navy, Air [F]orce) bodybuilders like [REDACTED] and many others.” The record includes a participation

professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal circuit, the court’s reasoning indicates that CIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

certificate stating that the petitioner coached the winning team at the Senior National Body Building Championships in Calcutta in 1997. Further, in response to the director's request for evidence, the petitioner submitted several notarized letters from members of the Support Services Control Board Body Building Team, Mumbai, India, stating that the petitioner was their "coach and trainer for both national and international body building events." These letters list national awards the bodybuilders received while being coached by the petitioner. For example, Prasad Kumar's letter indicates that the petitioner's training resulted in his winning the IBBF's "Mr. India" Bodybuilding Championships several times during the 1990s.

Even if we accepted that the preceding bodybuilders won the national awards specified in their letters during the petitioner's tenure as coach, without more recent evidence relating to this regulatory criterion or the remaining criteria, the petitioner cannot establish that he enjoyed sustained national or international acclaim as of the filing date, August 16, 2005. The statute and regulations require the petitioner's national or international acclaim as a bodybuilding coach to be sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The record reflects that the petitioner's tenure as a bodybuilding coach for the Indian Navy and his country's other armed services ended in 1999. Letters from the Indian Navy Sports Control Cell state that the petitioner trained team members from 1991 to 1999 and that he took "voluntary retirement in 1999." There is no documentation showing that the petitioner has worked as a coach subsequent to his retirement from the Indian Navy in 1999 or that bodybuilders under his direct supervision have won nationally or internationally recognized awards since that time.² As there is no evidence that the petitioner has sustained national or international acclaim through coaching achievements subsequent to the 1990s, we cannot conclude 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. Further, 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 showing that he participated in events organized by the IBBF and the Asian Body Building Federation (ABBF). The record, however, includes no evidence (such as membership bylaws or official admission requirements) showing that these organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. As such, the petitioner has not established that he meets this criterion.

² According to the petitioner's Form G-325A, he worked as a trainer for the Tara Health Club in Punjab India from January 2003 to July 2003. From July 2003 to March 2005, the petitioner indicated that he was "retired" and identified no employment. In January 2006, the petitioner started working as an attendant at the Gibbs Delta Service Station in Livingston, New Jersey.

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.

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 or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted articles about him entitled "Muscleman from Jullundur" (1978) and "Mr. India [the petitioner]" (1978). The names of the publications in which these articles were printed and the author of the latter article were not identified as required by the plain language of this regulatory criterion. The petitioner also submitted two articles about him in *Sher-E-Panjab* dated January 2003 and November 2006. There is no evidence (such as circulation statistics) showing that *Sher-E-Panjab* qualifies as a professional or major trade publication or other form of major media. Nor was the author of the November 2006 article in *Sher-E-Panjab* identified. Further, this article was published 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)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the November 2006 article in this proceeding.

The petitioner's documentation also included articles entitled "4-Member team for 'Mr. Asia,'" "Prem Crowned," and "Men at Work" (1990), but none of these articles were primarily about the petitioner.⁴ For example, the article in *Debonair* entitled "Men at Work" (pages 72-74) only mentions the petitioner's name in passing. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires the published material to be "about the alien." With regard to the articles entitled "4-Member team for 'Mr. Asia'" and "Prem Crowned," the newspapers in which these articles appeared were not identified, nor were the dates of publication indicated. Moreover, the petitioner also submitted a captioned photograph of him printed in an unidentified newspaper. Such material, however, does not meet the plain language of this regulatory criterion. Finally, there is no evidence showing that the preceding materials were published in professional or major trade publications or some other form of major media.

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

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

