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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-093-51294 Office: Vermont Service Center Date: 2 MAR 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER [Redacted]

Public Copy

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is described as a gymnasium for amateur boxing. The beneficiary is a competitive amateur boxer. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics, in order to employ him in the United States for a period of three years as a program coordinator at a salary of \$600 per month.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability in athletics which requires sustained national or international acclaim and recognition as being at the very top of the field of endeavor.

On appeal, counsel for the petitioner submitted a letter from the New Jersey branch of USA Boxing.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien who has extraordinary ability in athletics.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) 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;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is described as a native of Morocco and a citizen of Belgium. It was stated that he is an amateur boxer and that he holds a bachelor's degree in accounting. The record reflects that the beneficiary has been in the United States and has competed in the United States. However, his current country of residence, and immigration status if in the United States, is unknown.

On appeal, counsel submitted a letter from the New Jersey Association of [REDACTED] stating that it contacted the amateur boxing association in Holland and was advised that the beneficiary won five regional welterweight championships in Holland between 1997 and 2000.

Upon a review of the record, it cannot be concluded that the grounds for denial of the petition have been overcome. In order to establish eligibility for O-1 classification, a petitioner must establish that the alien has extraordinary ability and seeks admission to the United States in order to continue to work in the area of extraordinary ability. 8 C.F.R. 214.2(o)(1)(i). The alien also must have a foreign residence that he has no intention of abandoning. Id.

In this case, the petitioner has not submitted persuasive evidence that the beneficiary is recognized as having extraordinary ability in his field of endeavor, such as the beneficiary's national or international ranking in the sport of boxing. The fact that he won regional competitions in his country is not sufficient to establish the "sustained national acclaim" required by the statute. Therefore, the petitioner has not established that the beneficiary has extraordinary ability in athletics.

Furthermore, the petitioner is a New Jersey non-profit corporation established on June 8, 1998. Its stated purpose is the promotion of amateur "Olympic-style" boxing. The petitioner submitted an unsigned employment contract for the beneficiary stating that it seeks to employ him as a part-time "program coordinator" at a salary of \$600 per month. The petitioner did not provide a description of the programs it offers or of the program or programs that the beneficiary would coordinate. Even if the beneficiary were shown to possess the requisite extraordinary ability, the record does not contain sufficient documentation to demonstrate that working as a part-time program coordinator at the petitioner's gym would constitute continuing work in the area of extraordinary ability.

Finally, a consultation with the appropriate labor organization is required. If Boxing USA is the governing body of amateur boxing in the United States, a consultation with that national organization is required, not a consultation with a state chapter of that organization.

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

ORDER: The appeal is dismissed.