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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



File: EAC 02 199 51654 Office: VERMONT SERVICE CENTER Date: **NOV 20 2003**

IN RE: Petitioner:
Beneficiary:

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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
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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a box manager, seeking 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. The petitioner seeks to employ the beneficiary temporarily in the United States for an undetermined period as a boxer and prizefighter.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies for the O-1 classification and that the petitioner failed to submit a written consultation.

On appeal, counsel for the petitioner asserts that the beneficiary is an athlete of extraordinary ability and submits additional evidence.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and appeal documents.

Section 101(a)(15)(O)(i) of the 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 with extraordinary ability in athletics as defined by the statute and the regulations.

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.

The petitioner has made no claim that the criteria in paragraph (o)(3)(iii) of 8 C.F.R. § 214.2(o)(3)(iii) do not apply to the beneficiary's occupation of a boxer.

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 in this matter is a 28-year old native and citizen of Kenya. The record reflects that he was last admitted to the United States on February 16, 2002 in B-1 classification as a visitor for business.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Neither is the

record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner asserts that the beneficiary won the National Welterweight Championship of Kenya, the East Africa Welterweight Championship of Kenya, and ranked 26th in the super welterweight division by the World Boxing Council (WBC) as of November 2001. The petitioner asserts that the beneficiary is the Commonwealth Light Middleweight Champion and as of March 30, 2002, he ranked 20th by WBC in his division.

The petitioner failed to submit corroborating evidence to establish that the beneficiary was the National Welterweight Champion of Kenya. He provided some corroboration to establish that the beneficiary won the rest of the above-listed awards. However, the petitioner failed to establish the significance of these awards. The petitioner must submit extensive documentation to establish that these are nationally or internationally recognized prizes or awards.

For criterion number two, no evidence was submitted.

For criterion number three, the petitioner submitted several items about the beneficiary. One article was undated and therefore, cannot be considered. The petitioner submitted the WBC's ranking of boxers that was published in *The Ring* that lists the beneficiary as ranking 26th in his division. These articles are not primarily about the beneficiary as required by the regulation, but list the beneficiary's ranking among many others. The petitioner failed to submit evidence that these publications are major trade publications or major media. The petitioner also submitted a subsequent WBC ranking that was published in *The Nation*, showing the beneficiary ranking 20th in his division. The petitioner failed to establish that the beneficiary has sustained international or international acclaim in his field of endeavor through published material about the alien. The beneficiary does not satisfy criterion number three.

No evidence was submitted in relation to criteria numbers four through eight.

In review, the evidence fails to show that the beneficiary

has sustained national or international acclaim and recognition for major achievements in the field of athletics.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

The petitioner failed to submit a consultation as required by the regulations. For this additional reason, the petition must be denied.

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.