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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 13 2005

WAC 03 094 53356

IN RE: Petitioner:
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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 found that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability in athletics.

Section 203(b) of the Act states, in pertinent part:

> (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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in athletics as a personal trainer of power lifting. All of the evidence submitted relates to the petitioner's abilities as an individual athlete in power lifting. None of the evidence relates to his skills as a personal trainer, the profession he seeks to pursue in the United States. Thus the petitioner has not met the statutory requirement that he seeks entrance to the United States to continue work in the area of extraordinary ability. Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii). *See also Lee v. I.N.S.*, 237 F.Supp. 2d 914 (N.D. Ill. 2002). Although a nexus exists between skill and experience as an athlete and as a personal trainer in the same sport, the two professions are not identical. We cannot presume that every successful athlete can become an equally successful personal trainer. In cases involving the similar situation of former athletes who seek to work as coaches in the United States, this office has determined that given the nexus between competing and coaching, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at

a national level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Yet we cannot apply that analysis to this case because the petitioner presents no evidence that he has ever worked as a personal trainer.

The petitioner initially submitted evidence of eight awards which he won in national and international power lifting competitions between 1997 and 2000 as well as a letter from L.A. Fitness Sports Clubs stating that they would hire the petitioner as a power lifter trainer because of his "unique power lifting experience." In response to the director's request for evidence, the petitioner submitted two articles, a handwritten recommendation letter from power lifter George Brink, and nine documents from power lifting officials in Uruguay attesting to their authority and the nature and significance of the petitioner's awards, judging experience, and membership in power lifting organizations. The director found that the petitioner met only one regulatory criterion and consequently denied his petition. On appeal, counsel maintains that the petitioner meets three criteria. We affirm the director's ultimate decision that the petitioner is not an alien with extraordinary ability in athletics as a personal trainer. The evidence submitted, the director's decision and counsel's contentions are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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 that he received numerous awards in national competitions held by the Power Lifting Federation of Uruguay (FULP) from 1997 to 2000. In 1997, the petitioner was the national vice-champion of power lifting. In 1998, he was the national champion of power lifting. From 1998 through 2000, the petitioner was the national champion in the bench press and set a national record in 2000. In 1998 and 1999, the petitioner was named a Youth of Promise in power lifting by the Olympic Committee of Uruguay (COU). In 1998, the petitioner won a bronze medal in power lifting at the South America Championship of Power Lifting conducted by the South America Power Lifting Federation (FESUPO). The petitioner also submitted a document by FULP and FESUPO officials attesting to the nature and significance of these awards. In his discussion of this criterion, the director concluded that the evidence was sufficient to establish the petitioner's eligibility under this category.[1]

We would agree with the director's decision if the petitioner was seeking to work in the United States as a power lifter. Yet the petitioner plans to work as a personal trainer. The petitioner's awards evidence his ability as a power lifter, but do not speak to his skill as a personal trainer. Evidently, national power lifting training awards do exist in Uruguay, but the petitioner apparently has won no such awards.[2] We cannot even consider awards won by athletes the petitioner has trained as potentially comparable evidence for this criterion under the regulation at 8 C.F.R. § 204.5(h)(4) because the petitioner has no experience as a personal trainer. Consequently, the petitioner has not established his eligibility under this criterion.

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[1] On page two of the director's decision he finds that the petitioner has met this criterion, but then states in the final paragraph of his decision that no evidence was found relating to this criterion. We believe the latter statement is an error.

[2] The petitioner submitted evidence that the COU awards a prize for "best trainer" in power lifting to the individual who has trained the most champions. *See* Petitioner's Exhibit, "Participation of Pablo Eguez as Leader in Recognized Organization."

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.

The director correctly concluded that the petitioner did not meet this criterion. The petitioner submitted evidence that FUPO selected him as a member of the team representing Uruguay in the 1998 FESUPO championship because he was the national champion in power lifting for that year. Based on his subsequent receipt of a bronze medal in the 1998 South America Championship of Power Lifting, the petitioner then became a "member" of FESUPO. Although athletic teams are not "associations," we can consider evidence of national teams such as Olympic delegations as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4) because membership in such a team results from national competitions run by national experts. Thus the evidence submitted in this case might demonstrate the petitioner's eligibility as an athlete, but it does not establish his eligibility as a personal trainer.

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.

The director correctly found that the evidence submitted was insufficient to meet this criterion. The petitioner submitted an article from the May 19, 1999 edition of the *Diario El Pais* newspaper entitled "Federico Morales Was Honor [sic] Like the Best Athlete of the Year: The Weight of a Legend." The text of the article does not mention the petitioner, but simply lists his name in a table of "The Best" athletes in 30 categories as the "promissory figure" in power lifting. The petitioner also submitted an article about a power lifting exhibition in the May 2000 edition of "Club News" that only briefly mentions the petitioner as "the national record holder" who participated in the exhibition. *Diario El Pais* may be a major newspaper in Uruguay, but the petitioner offers no evidence that "Club News" is a major trade publication. Most importantly, neither of the articles focuses on the petitioner (as power lifter or personal trainer) and cannot establish his eligibility under 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.

The petitioner submitted evidence that he was a "left support judge" for four national power lifting championships of the FUPO in 1999. According to FUPO officials and a former international power lifting judge, FUPO judges must pass a test administered and certified by the International Judge of Powerlifting association (IPF). The test requires a candidate to understand the current international rules of power lifting and demonstrate his knowledge in an interview with IPF officials. The petitioner passed this interview and was also chosen for his "excellent performance in powerlifting." The director did not address this evidence and it merits brief discussion. The petitioner was selected once to serve on the annual panel of power lifting judges for national FUPO competitions. Although significant, that one-time service occurred over three years before the filing of the petition and does not reflect sustained national acclaim as either an athlete or a personal trainer in power lifting.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The director correctly concluded that the petitioner did not meet this criterion. The petitioner submitted evidence that he participated in national and international competitions organized by FUPO and FESUPO and that he won several national and one international awards. The petitioner's awards and consequent membership in FUPO and FESUPO were also considered in the above discussion of the first and second criteria. The statutory requirement for extensive documentation and the regulatory requirement to meet at least three criteria lead us to disfavor considering one accomplishment under several criteria. In addition, the attestation of FUPO and FESUPO officials documents that the petitioner was an athlete of considerable value to these two groups, but it does not establish that he played a critical or leading role for either organization. It is also important to note that the petitioner's role in these organizations was that of an athlete, not a personal trainer.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field of endeavor. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not met that burden. The evidence shows that the petitioner was a talented power lifter who won several awards and once judged power lifting competitions in his native country. However, the record is insufficient to establish that the petitioner is an alien with extraordinary ability in athletics, specifically as a personal trainer for power lifting. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.