U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 14 2007

WAC 03 023 55094

IN RE: Petitioner: [redacted]
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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based preference visa petition. In connection with the petitioner's Application to Register Permanent Residence or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition. In a Notice of Revocation, the director ultimately revoked the approval of the petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the approval of the petition will remain revoked.

Section 205 of the Act, 8 U.S.C. § 1155, provides: "The Secretary of Homeland Security, may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Id. (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Finally, the approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

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. Part 6 of the Form I-140 petition reflects that the petitioner seeks employment as a "Professional Bodybuilder." 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 (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 she has sustained national or international acclaim at the very top level.

On motion, counsel states: "The AAO does not appear to dispute that the petitioner attained sustained national acclaim for her achievements in Mexico. . . . Notoriety outside the petitioner's native country is not required to meet the sustained national acclaim standard." Counsel's first sentence misstates the AAO's April 14, 2006 decision. The AAO found that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. We agree with counsel that the petitioner is not required to make a showing of sustained national acclaim in more than one country. The statutory and regulatory language clearly allows for the submission of evidence demonstrating sustained "national" acclaim at the very top level of one's field. The findings in the AAO's decision were entirely consistent with this conclusion.

The AAO's decision concluded by stating:

> Review of the record . . . does not establish that the petitioner has distinguished herself as a competitive athlete to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a bodybuilder, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field.

Specifically, the AAO and the director found the petitioner had not established that she meets at least three of the regulatory criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. As noted above, the petitioner seeks classification as an alien of extraordinary ability as a "Professional Bodybuilder." We acknowledge the petitioner's success as an amateur bodybuilder in Mexico during the 1990s. However, success at the amateur level in bodybuilding 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). The introductory language of section 203(b) of the Act relates to visa

"allocation for *employment-based* immigrants." [emphasis added] Therefore, we find that evaluating the petitioner among "professional" bodybuilders (rather than amateurs) is the proper basis for comparison in this proceeding. 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 follow that a bodybuilder who relies heavily upon her amateur accomplishments should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Since turning professional in 1998, there is no evidence that the petitioner has received any prizes or awards at professional bodybuilding competitions. The fact that the petitioner has not won any professional bodybuilding titles since 1998 suggests that whatever acclaim she had earned as an amateur in Mexico has not been sustained. The petitioner's eligibility for this restrictive visa classification cannot rest primarily upon her achievements during the 1990s as an amateur female bodybuilder.

A June 26, 2002 letter from Owner, [redacted], and founding editor of *FLEX* magazine, the official publication of the International Federation of Bodybuilders, states: "A country like Mexico is a very good example of a country where the prevailing culture is not very sympathetic to women bodybuilders and where opportunities for advancement and success past a certain level simply don't exist."

In addressing the scope of the petitioner's field, the AAO's decision stated:

> In general, the evidence suggests that the petitioner's field is exceedingly small. Ranking at the top of a field of one is meaningless. While the petitioner's field is not a field of one, the extremely small number of professional and even amateur competitors somewhat diminishes the significance of her accomplishments . . . .

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[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 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 judicial district and circuit, the court's reasoning indicates that CIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

Counsel argues that this conclusion "has no support in either law or fact. . . . By requiring that the petitioner 'demonstrate that she has won awards or prizes in a field with a significant pool of potential competitors,' the AAO is imposing a greater requirement than the statutory 'sustained national acclaim standard.'"

We find that the AAO's observations are supported by the statute, regulations, and binding precedent. It is certainly reasonable to conclude that a sport with a substantial competitive following would provide a greater opportunity for demonstrating one's acclaim at the national or international level, as opposed to a sport where the competitive field is exceedingly small. Further, as indicated previously, the regulation at 8 C.F.R. § 204.5(h)(2) states: "*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." Qualifying as one of that "small percentage" at the very top of one's field requires an athlete to distinguish herself from a significant number of her peers. In *Matter of Price*, 20 I&N Dec. at 955, the AAO found significant that the alien in that case had an all-around ranking of 10th among 10,000 professional golfers worldwide and 600 in the PGA (Professional Golfers' Association) tours. Ranking 10th among 10,000 professional golfers places an individual in the top tenth of one percent of the field. Ranking 10th among 600 in the PGA tours places an individual within the top two percent of that field. Thus, unlike the petitioner's evidence, the evidence submitted by the athlete in *Matter of Price* was sufficient to satisfy the regulation at 8 C.F.R. § 204.5(h)(2).

A July 2, 2002 letter from [redacted], President of the Mexican Federation of Bodybuilders, states that the petitioner was "in the 26 place of the IFBB [International Federation of BodyBuilders] Pro-female ranking out of 98 other bodybuilders."[2] In contrast to the high ranking of the professional athlete in *Matter of Price*, this ranking does not place the petitioner in that "small percentage who have risen to the very top of the field." After the petitioner began competing professionally in 1998, she finished eighth out of ten in her class at the 2000 IFBB Jan Tana Pro Women's Classic, fourth out of four in her class at the 2001 Women's Extravaganza Pro Bodybuilding competition sponsored by the IFBB, fourth out of six in her class at the 2001 Jan Tana Pro Classic, third out of seven in her class at the 2002 Southwest USA Women's Pro Cup, and sixth out of six in her class at the 2002 Jan Tana Pro Classic.[3] None of these finishes elevates the petitioner to that small percentage who have risen to the very top of the sport of bodybuilding. The petitioner's highest professional finish, third out of seven, placed her only within the top 43 percent of her competitive class. Thus, the evidence presented by the petitioner fails to satisfy the regulation at 8 C.F.R. § 204.5(h)(2).

Counsel also argues that the petitioner has "satisfied at least three out of the 10 criteria of 8 C.F.R. § 204.5(h)(3) for determining extraordinary ability." 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

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[2] According to the IFBB's constitution, the "IFBB founded in 1946, is an international sport governing body for the sport of bodybuilding and fitness."

[3] The petitioner finished sixth out of six female middleweight competitors at the 2002 Jan Tana Pro Classic. *See* http://www.bodybuilding.com/fun/2002jan.htm, accessed on June 11, 2007.

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 that, she claims, meets the following criteria.[4]

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

In addressing this criterion, the AAO's April 14, 2006 decision stated:

> In 1995, the petitioner, from Queretaro, won first place in her class and third overall at the 1995 Clasico [redacted] and [redacted] A flier identifies the petitioner as [redacted]. This win was covered in the local section of a Queretaro newspaper. In 1998, the petitioner competed at the 13th Iberoamericano Championships in Guatemala where an article, according to an incomplete translation, reports that she won in her class and overall. The first place plaque, however, does not list the name of the winner. The record does not reveal how many women competed in this competition. According to the same translation, this win allowed the petitioner to begin competing professionally. Another partial translation of an article in an unknown newspaper states the petitioner's win of the "Luchador Olmeca," reported to reward the best Mexican sportswoman.
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> Once she began competing professionally, the petitioner finished eighth out of ten in the 2000 Jan Tana Classic, fourth out of four in her class at the 2001 Extravaganza Pro Bodybuilding sponsored by the International Federation of Body Building (IFBB), fourth out of six in her class at the 2001 Jan Tana Classic, third out of seven in her class at the 2002 Southwest USA Women's Pro Cup, and sixth out of an unknown number in the 2002 Jan Tana Classic. Only the first place finishers qualify to compete at Ms. Olympia and the record does not establish whether the second and third place finishers receive an actual "award" or "prize."
>
> The director concluded that the petitioner sought entry as a professional bodybuilder and, thus, must demonstrate professional awards or prizes. The director further concluded that one such award was insufficient.
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> On appeal, counsel asserts that the petitioner has won more than one nationally or internationally recognized prize or award. Given the extremely limited size of women competing in IFBB competitions from around the world and the fact that the petitioner is only the second woman from Mexico to turn professional, it is reasonable to question the number of competitors for Miss Perfection in Mexico. As stated above, the petitioner has not demonstrated that the competitions were even covered by any major media in Mexico. The record also lacks evidence regarding the significance of the Iberoamericano competition. Not every competition that has competitors from more than one country is internationally

[4] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

recognized. The record contains no major media coverage of this event and the plaque does not even include the petitioner's name.

While some references have stressed that the petitioner has finished in the top five or six in IFBB competitions, the record reveals that only 23 or 24 women total competed in all professional classes in these competitions and only between ten and four competed in the petitioner's class in some competitions. The record lacks evidence that large numbers of professionals were eliminated in qualifying competitions. Rather, these competitions appear to be the qualifying competitions for the Ms. Olympia competition. We note that in *Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm. 1994), the AAO found significant that the alien in that case had an all-around ranking of 10th among 10,000 professional golfers worldwide and 600 in the PGA tours.

The petitioner has not established that she has won awards or prizes in a field with a significant pool of potential competitors. Thus, we cannot conclude that the petitioner meets this criterion.

On motion, the petitioner submits a certified English language translation of an article appearing in *MuscleMag Mexico*, entitled "Mr. Iberoamerica," stating: "Last year in the Iberoamerican Championships that were held in Guatemala more than 250 competitors from more than 14 countries were participating and competing. Mexican competitors did very good, they won 3rd place as a country. . . . 1st Place Female Heavyweight class and overall: [the petitioner]."[5] While this article states that the event involved 250 competitors, there is no indication as to how many of these competitors were male bodybuilders versus how many were female. The record includes no evidence (such as a competition roster or official competitive results) indicating the specific number of female bodybuilders who competed in the Iberoamerican Championships. The petitioner also submits a certified English language translation of an article entitled "[The petitioner] is excellent a[t] the XIII Iberoamerican Championships" which discusses her victory. The name of the publication in which this article appeared has not been identified. The record also includes a June 13, 2005 letter from M[redacted]z, President of the Mexican Federation of Bodybuilders, stating:

[The petitioner] won several times the most renown [sic] contests in Mexico such as the NATIONAL CHAMPIONSHIPS and the MS. PERFECTION titles, but in our country, this is not enough to reach the Professional level. To earn her Pro Card she needed to won [sic] an International competition such as the IBEROAMERICAN CHAMPIONSHIPS, which is sanctioned by the IFBB, and in which 25 countries competed. She represented our country winning her class in the 1998 IBEROAMERICAN CHAMPIONSHIPS, as a winner in her class she competed against the winners of the other weight classes and winning the overall title she earned the Pro Card.

Regarding the preceding evidence relating to the petitioner's victory at the Iberoamerican Championships, the petitioner failed to submit evidence showing the total number of *female* competitors who participated, the circulation of the publications that covered the event, or that she competed against professionals rather than only amateurs. Moreover, even if the petitioner had provided such evidence, we note that her 1998 victory occurred four years before the petition was filed and thus is not consistent with sustained national acclaim. We concur with the director's finding that the petitioner sought entry as a professional bodybuilder and, thus,

[5] The petitioner's photograph appeared on the cover of the issue that included this article.

must demonstrate professional awards or prizes. The plain language of this criterion requires the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence "in the field of endeavor."[6] In the petitioner's sport, beyond the "amateur" level, there exists the "professional" level, which is the highest level of competition. Thus, the petitioner's amateur bodybuilding victories, including the Iberoamerican Championships, are not an indication that she has reached the "very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). Without evidence showing that the petitioner has won prizes at competitions with a significant pool of competitors at the professional level, we cannot conclude that her competitive victories meet this criterion.

The petitioner's motion includes evidence showing that she received a plaque from the Chairman of the Institute of Sports and Recreation of the State of Queretaro, Mexico. This award reflects regional recognition rather than national or international recognition.

The petitioner also submits evidence showing that she was presented with a "Luchador Olmeca" Trophy by the Mexican Sports Confederation in 1999. The documentation submitted by the petitioner indicates that this award is given to the best Mexican sportsman or sportswoman in various sports categories based on "their discipline, dedication and enthusiasm in favor of their sport." This single award appears to qualify as a lesser nationally recognized award for excellence. However, the plain language of 8 C.F.R. § 204.5(h)(3)(i) requires the "alien's receipt of lesser nationally or internationally recognized *prizes* or *awards*" (emphasis added). As noted by the director, one such award does not satisfy the plain language of this criterion.

In addition to the preceding deficiencies, we note that section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3) require the petitioner to demonstrate that her national or international acclaim has been sustained. Since turning professional in 1998, there is no evidence that the petitioner has received any prizes or awards at professional bodybuilding competitions. The fact that the petitioner did not win any professional bodybuilding titles suggests that whatever acclaim she had earned as an amateur in Mexico during the 1990s was not sustained during the four years of her professional career preceding the filing of this petition.

In light of the above, the petitioner has not established that she 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 addressing this criterion, the AAO's April 14, 2006 decision stated:

> The petitioner relies on her professional membership in IFBB to meet this criterion. She submitted IFBB's constitution, which provides:
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> 9.2 **Direct Membership:**

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[6] Parts 5 and 6 of the I-140 petition identify the petitioner's "Occupation" and "Job title" as "Professional Bodybuilder."

> Although the IFBB shall not offer direct individual membership, members of National Federations, by virtue of their acceptance into the IFBB family, agree to be bound by the Constitution or Rules.
>
> 9.3 **Membership by Association:**
> Athletes, judges, administrators, and other officials become Members of the IFBB by virtue of their association with their National Federation pursuant to the terms and conditions as set out in the constitution and rules of the respective National Federation.

The director concluded that since membership in IFBB is based on membership in a National Federation, the petitioner must provide evidence of the membership criteria for the National Federation of which she is a member.

On appeal, counsel discusses the prestige of the IFBB and asserts that the petitioner is only one of two Mexican women who compete professionally. While a large number of members suggests that an association is not exclusive, we will not presume that every association with a small number of members is sufficiently exclusive to meet this criterion. The petitioner has still not provided the actual membership criteria for the National Federation of which she is a member. Without that information, we cannot determine whether that membership requires outstanding achievements as judged by national or international experts.

Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) provides:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Thus, the mere fact that the petitioner competes professionally is insufficient to establish her eligibility for the classification sought.

On motion, counsel cites the June 26, 2002 letter from [redacted]s which states: "After totally dominating amateur bodybuilding for women in Mexico for a number of years, [the petitioner] was deemed qualified to compete as a professional by the IFBB." Counsel also cites the June 13, 2005 letter from [redacted] as further evidence for this criterion and argues that the preceding evidence was "ignored or disregarded by the AAO." While these letters of support indicate that the petitioner's amateur victories allowed her to compete professionally at IFBB events, we do not find that earning the right to compete for prize money is indicative of outstanding achievement in professional bodybuilding. The petitioner has still not provided the official membership criteria for the Mexican Federation of Bodybuilders of which she is a member. Without that information, we cannot determine whether that membership requires outstanding achievements as judged by national or international experts. Thus, the petitioner has not established that she meets this criterion.

> *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 general, 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.[7]

In addressing this criterion, the AAO's April 14, 2006 decision stated:

> We acknowledge the copious published materials in the record. Many of the articles that focus primarily on the petitioner, however, are in a foreign language. According to the regulations at 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii), the petitioner must provide complete and certified translations for all foreign language documents, including published materials. Some of the translations submitted are incomplete. Moreover, the petitioner failed to submit evidence of the circulation for any of the publications that have covered her, as opposed to those publications that merely report the results of competitions where she competed. Finally, we acknowledge that photographs of the petitioner appear on numerous Internet websites devoted to female bodybuilders. The petitioner has not established the significance of these sites. National or international exposure is not necessarily the same as acclaim. Thus, the petitioner has not satisfied her burden of demonstrating that she meets this criterion.

On motion, the petitioner submits articles entitled "[The petitioner] receives an important national award" and "Award well deserved is given by INDEREQ [Institute of Sports and Recreation of the State of Queretaro] to [the petitioner]." Both articles were accompanied by a full English language translation, but the name of the publications featuring the articles was not identified. The petitioner also submits an incomplete English language translation of an article appearing in *MuscleMag Mexico*, entitled "Mr. Iberoamerica." The date of the preceding articles and the name of their authors were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The documentation accompanying the motion also includes a full English language translation of an interview of the petitioner published in *Fisicoculturismo y Fitness* magazine. The AAO's April 14, 2006 decision specifically noted that the petitioner "failed to submit evidence of the circulation for any of the publications that have covered her, as opposed to those publications that merely report the results of competitions where she competed."[8] Despite being informed of this deficiency, the petitioner's

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[7] 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.

[8] Having one's name appear in a published listing of competitive results (with no specific discussion about the petitioner) does not satisfy the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii). For example, the petitioner's name was listed as placing eighth out of ten competitors at the 2000 IFBB Jan Tana Pro Women's Classic in the November 2000 issue of *FLEX* magazine. The petitioner, however, was not discussed in the article

motion includes no circulation statistics or other evidence that *Fisicoculturismo y Fitness* magazine or the other publications featuring the articles identified above are professional, major trade publications, or other major media.

In light of the above, the petitioner has not established that she meets this criterion.

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

In addressing this criterion, the AAO's April 14, 2006 decision stated:

> Initially, counsel asserted that the petitioner's awards and "mere presence" at bodybuilding competitions generated "vast amounts of financial backing for the sport." Counsel further asserts that the petitioner "will" have an opportunity for sponsorship deals. Finally, counsel quotes from the petitioner's reference letters. The director concluded that the petitioner had not demonstrated that her achievements were "original" or contributions of major significance. The director further concluded that the record did not support counsel's assertion that bodybuilding had benefited financially from the petitioner as there was no evidence that the $20,000 generated by the petitioner's video had gone to the sport. Finally, the director concluded that the petitioner had not demonstrated that the sport had been impacted as a result of her activities. On appeal, counsel reiterates previous assertions and fails to address the director's concerns. At the end of the brief, counsel cites *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995) for the proposition that reference letters are often the best evidence of acclaim.
>
> In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. While *Muni v. INS*, 891 F. Supp. at 440, does use the language noted by counsel, the alien in that matter was the starting defenseman for an NFL Hockey Team that won the Stanley Cup three times. Thus, he was hardly just relying on witness letters.
>
> The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in

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accompanying the published results. If the published material is not primarily about the petitioner, then it fails to demonstrate her national or international acclaim.

any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of bodybuilding, it can be expected that the petitioner would have demonstrably impacted the field.

Some of the letters are from photographers and operators of websites that feature female bodybuilders. [redacted], a professional photographer with Physique Art, Inc., asserts that he became aware of the petitioner through magazine coverage of her accomplishments and has worked with her. [redacted] praises the petitioner's accomplishments, but does not assert that the petitioner has impacted the field of bodybuilding. [redacted], another photographer, asserts that he visited the petitioner's website and now features the petitioner on his own website dedicated to female bodybuilders. He praises the petitioner's accomplishments, noting that she placed "in the top five" in prestigious competitions. His failure to acknowledge that these competitions had barely more than five competitors in the petitioner's class somewhat diminishes the evidentiary value of his assertions. Regardless, [redacted] does not assert that the petitioner has impacted the field of bodybuilding. The remaining photographer letters are similar, further asserting that she is in great demand by website photographers.

[redacted] President of the Mexican Federation of Bodybuilders, chronicles the petitioner's career and concludes that it is "clear" that the petitioner is "a role model and a great motivation to many bodybuilders in Mexico and around the world." [redacted] points to no facts that would support his assertions, such as evidence that the number of amateur female bodybuilders has increased by a statistically significant number since the petitioner began competing successfully.

[redacted], Producer and Owner of Fast Twitching Video, asserts that his video of the petitioner posing in various outfits is one of his "highest grossing titles" that has sold between 800 and 1,000 copies worldwide and grossed approximately $20,000. We concur with the director that the record lacks any evidence that would suggest that the sales of this video, which is not an exercise or fitness video, has contributed to the finances of the sport of bodybuilding.

a founding editor of *FLEX Magazine*, asserts that he has photographed and interviewed the petitioner. He asserts that the prevailing culture in Mexico is not sympathetic to female bodybuilders, making her achievements all the more notable. He does not assert, however, that the petitioner has impacted the field in Mexico such that more women are now participating in the sport.

[redacted], General Manager of Gold's Gym in Venice California, asserts that the petitioner is an "outstanding ambassador for the sport." Once again, the record lacks evidence that the petitioner's participation in the field has promoted a statistically significant rise in participation by other women.

Finally, two other female bodybuilders reiterate the petitioner's achievements, with little explanation as to how her achievements are "original" or constitute "contributions of major significance." The petitioner also submitted letters from IFBB officials and talent agents providing similar information.

Even considering the above praise, the petitioner has not established that her ability to remain competitive in her field constitutes an original contribution of major significance to her field.

On motion, counsel argues that the petitioner's awards and competitive results meet this criterion. The petitioner's awards and competitive results, however, have previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). 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 her athletic contributions have had a substantial impact on her field or that the field has somehow changed as a result of her achievements. For example, holding a 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, the petitioner has failed to demonstrate original athletic accomplishments that rise to the level of contributions of major significance consistent with sustained national (or international) acclaim.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

In response to the director's May 21, 2005 notice of intent to revoke, the petitioner submitted evidence showing that she wrote a nutritional column responding to reader questions that appeared in the November 2003 and December 2003 issues of *Fisicoculturismo y Fitness* magazine. These articles were not accompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no indication that these articles were "scholarly" in nature or that this magazine qualifies as a professional, major trade publication, or a form of other major media. More importantly, the issues in which the petitioner's column appeared were published subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Commr. 1971). Accordingly, the AAO will not consider this material in this proceeding. Thus, the petitioner has not established that she meets this criterion. On motion, counsel does not address this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The plain language of this criterion indicates that it applies to artists rather than to competitive athletes such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

In addressing this criterion, the AAO's April 14, 2006 decision stated:

> Counsel has continuously maintained that the petitioner's appearances at competitions are displays of her "art," namely her body. The director rejected this reasoning, asserting that the record establishes that the petitioner's field is athletics, not visual arts. The director determined that the competitions were competitive sporting events, not artistic exhibitions. On appeal, counsel continues to assert that the petitioner's "unique body is her work." Counsel continues:
>
> > The [director] states that Petitioner cannot satisfy this criterion by changing the wording to fit her need since a bodybuilding competition is an athletic event, not an artistic exhibition or showcase. The [director] makes these claims however without any proof that this is correct. In fact, bodybuilding is distantly related to the medieval carnival feat of strength.
>
> Counsel then concludes that bodybuilding focuses on the classic body that was on display in art during the Renaissance. Counsel references a German bodybuilder who "displayed" his mostly nude body and sold books and magazines in the 1890s on the shapely body.
>
> The petitioner submits materials from the Internet Encyclopedia of Gay, Lesbian, Bisexual, Transgender and Queer Culture discussing the emergence of bodybuilding as "entertainment." The article notes the display of bodybuilders at carnivals. The article concludes by discussing the emergence of bodybuilding as a sport. The article notes that in bodybuilding sports competitions, the contestants lift weights off stage and the "show" was the "pump" derived from the exercise of muscle.
>
> The plain language of the regulation references "artistic exhibitions or showcases." The director's decision relies on this unambiguous language. We reject counsel's implication that the director must offer "proof" in order to rely on this language. Rather, it is the petitioner's burden to demonstrate why we should deviate from the plain language of the regulation.
>
> We are not persuaded that the inclusion of bodybuilders at carnivals transforms the petitioner's sport into an art. Moreover, just as every artist able to make a living in her field must display her work at some level, professional bodybuilders must compete in order to make a living in their field. The petitioner has not established that her participation in competitions compares to the exclusive showcases of an artist's work that is contemplated by this regulation for visual artists.
>
> Significantly, the statute requires the submission of extensive evidence. The regulations require that an alien meet three separate criteria. These requirements would be meaningless if we concluded that the

petitioner's participation in professional competitions constitutes awards, exclusive memberships, original contributions of major significance and artistic displays as urged by counsel.

Ultimately, we concur with the director that the petitioner's entry into bodybuilding competitions cannot be considered equivalent to exclusive showcases of a visual artist's work.

On motion, counsel states: "The AAO . . . erroneously adopted the finding of the CSC [California Service Center] Director that bodybuilding is a sport instead of an art." Counsel argues that "bodybuilding is both a sport and an art." In support of this argument, the petitioner submits material printed from *Wikipedia*, an online encyclopedia, stating:

> **Bodybuilding** is the process of developing muscle fibres through the combination of weight training, increased caloric intake, and rest. Someone who engages in this activity is referred to as a **bodybuilder**. As a sport, called *competitive bodybuilding*, bodybuilders display their physiques to a panel of judges, who assign points based on their aesthetic appearance. [emphasis in original]

Counsel focuses on the term "aesthetic" to argue that bodybuilding is an art. The above material, however, refers to competitive bodybuilding "as a sport" rather than an art. Virtually every athlete "displays" his or her work in the sense of performing in front of an audience. Nothing in the IFBB's constitution states that bodybuilding is an art, nor is there any other objective evidence originating from the IFBB indicating that the various competitions in which the petitioner competed were "artistic exhibitions" rather than sporting events. Further, the record contains no evidence showing that the petitioner participated in a competitive event administered by an arts organization as opposed to a sporting organization. Thus, we must conclude that the petitioner's field is not in the arts.

In light of the above, the petitioner has not established that she meets this criterion.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

In addressing this criterion, the AAO's April 14, 2006 decision stated:

> While the petitioner has never claimed to meet this criterion, we note the submission of evidence that the petitioner appears in a [redacted] production, "The [petitioner's name] Video." The cover for the video does not suggest that it is a fitness video. Rather, the petitioner merely poses in various outfits. As stated above [redacted] asserts that the petitioner's video is one of his highest grossing titles, has sold between 800 and 1,000 copies and has generated $20,000 in sales. The director noted the lack of official sales data to support [redacted] assertions. Counsel does not respond to this concern on appeal. We concur with the director that sales of between 800 and 1,000 worldwide are not indicative of commercial success. Regardless, the petitioner is an athlete, not a performing artist. Thus, it is not clear that this criterion is applicable to her field.

The petitioner does not challenge the above findings on motion. Thus, the petitioner has not established that she meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A); 8 C.F.R. § 204.5(h)(2).

In this case, we concur with the director's finding and our prior decision that the petitioner has failed to demonstrate her receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The record supports the director's determination that the petition was approved in error. Accordingly, the director's recognition of the past error was good and sufficient cause to revoke the approval of the immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590.

The approval of the petition will remain revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N at 452 n.1; *Matter of Ho*, 19 I&N Dec. at 589. Here, the petitioner has not sustained that burden.

ORDER: The AAO's April 14, 2006 decision dismissing the appeal is affirmed and the approval of the petition remains revoked.