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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 02 2009

LIN 06 175 51986

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 submits a brief. For the reasons discussed below, the petitioner has not overcome all of the director's concerns. Specifically, while the petitioner has demonstrated that he minimally meets two criteria, counsel asserts that the petitioner meets the remaining criteria with the same evidence, some of which does not relate to those criteria or is simply not persuasive.

For example, counsel relies on the broadcast of competitions where the petitioner has competed on ESPN to meet several criteria. First, while ESPN may operate nationally recognized television stations, we cannot ignore that the stations broadcast sports and sports related programs 24 hours a day. The petitioner has not established that every event televised on an ESPN station is a major sports event. Moreover, the supplementary information at 56 Fed. Reg. 60899 (Nov. 29, 1991) states:

> 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."

Every major league player is likely to have appeared on network television during a game. Clearly, however, the language quoted above reveals that the regulations did not contemplate such appearances to be used to meet multiple criteria. While the ESPN appearances will be considered below, they do not carry the evidentiary weight imputed to them by counsel.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 he has sustained national or international acclaim at the very top level.

Before we can determine whether the petitioner has sustained national or international acclaim in the field he seeks to pursue in the United States, we must determine what he intends to do here. Initially, the petitioner submitted a letter from [redacted] owner of [redacted] in Virginia. Ms. [redacted] asserts that the gym wishes to employ the petitioner as a trainer in Sport Aerobics and would like him to represent the gym at Sport Aerobics competitions.

In response to the director's request for additional evidence, the petitioner submitted a letter from [redacted] addressed to the petitioner confirming SOBE's sponsorship of the petitioner at the upcoming World Cup Sports Aerobics Championship in Los Angeles in 2007. The petitioner also submitted a class schedule for the club listing the petitioner as the instructor for two classes.

The director concluded that the letters from Gold's Gym and SOBE conflicted with each other and, thus, could not establish the petitioner's intent to work in his area of expertise. On appeal, counsel affirms the prestige of both gyms and asserts that the SOBE letter was submitted "in addition to prior letters" relating to the petitioner's employment intentions.

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement

from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Moreover, counsel's assertions do not resolve whether the petitioner intends to work for and be sponsored by SOBE or Gold's Gym. That said, the regulation at 8 C.F.R. § 204.5(h)(5), quoted above, does not require a specific job offer. Rather, the regulation expressly allows letters (plural) from prospective employers (also plural). We are satisfied that the petitioner intends to work both as an instructor and a competitor. Thus, while we concur with the director that the record lacks extensive evidence[1] relating to the regulatory criteria regarding the petitioner's abilities as an instructor, we will consider his achievements as a competitor.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a sport aerobic athlete, instructor and choreographer. 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, international 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. The petitioner has submitted evidence that, he claims, meets the following criteria.[2]

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 several certificates. The majority of these certificates confirm only the petitioner's participation in various events. Participation is not a prize or award. Thus, we will only consider those certificates that confirm the petitioner's placement in first through third place.

The petitioner submitted a certificate from the Association of National Aerobic Championships (ANAC) confirming that the petitioner placed in the 2004 Italian national championships. The place number is handwritten and illegible. A second certificate from ANAC appears to confirm the petitioner's first place finish in the same championship in 2003. The petitioner placed second at the 2003 Nokia World Aerobic competition in Prague, a Federation of International Sports Aerobics and Fitness (FISAF) sanctioned event. In 2000, the petitioner placed [redacted] Championship in the Czech Republic, a FISAF sanctioned event. Finally, in 1999, the petitioner finished third at a FISAF sponsored event in France. Information downloaded from the website www.nac-italia.org and submitted by the petitioner references a second place finish in 2004, but the certificate for that award is not in the record.

[1] As quoted above, section 203(b)(1)(A)(i) requires extensive evidence of sustained national or international acclaim.

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

While some of the petitioner's references list other awards, those awards are not documented in the record. The regulation at 8 C.F.R. § 103.2(b)(2)(i) requires the submission of primary evidence. According to the regulation at 8 C.F.R. § 103.2(b)(2)(ii), affidavits are only acceptable once the petitioner has established that primary and secondary evidence are unavailable. The petitioner has not provided such evidence. Nor do the letters meet the definition of an affidavit. Thus, we cannot consider these additional awards.

The petitioner submitted information from FISAF's website asserting that it is "an international, independent, non-profit federation dedicated to sports aerobics and the development of the aerobic/fitness industry, internationally." The website lists 26 countries that are members. In addition, the petitioner submitted newspaper articles that, while not primarily about the petitioner, do cover the events where he competed. Finally, the petitioner submitted evidence that competitions where the petitioner has competed have been televised on ESPN. This evidence relates to the significance of the events where he competed.

In response to the director's request for additional evidence, the petitioner submitted information on NAC Italia Sport & Dance letterhead. The document is unsigned and does not appear to be an official pamphlet of the organization. According to this document, ANAC is the governing worldwide association for Sports Aerobics. The petitioner also submitted a 2004 draft agreement between the Federation of International Gymnastics (FIG), the worldwide governing body for gymnastics recognized by the International Olympic Committee (IOC) and ANAC. While labeled a draft, the document is signed by officials of both ANAC and FIG. The record also contains a December 2005 addendum. In the 2004 agreement, ANAC accepted that FIG and its Unions and Member Federations are the only organizations entitled to organize World and National Championships except where ANAC and FIG have come to an agreement otherwise and that ANAC will not name national or world champions or organize world championships. ANAC further agreed that its competitors would not participate in events organized by FISAF or any other non-recognized organization or accept competitors that had competed in such events. The December 2005 addendum provides that ANAC will use FIG rules and judges. The petitioner also submitted a history of FIG which indicates that FIG organized a Sports Aerobics commission and the first world championship in that field in 1994 and subsequently recognized Sports Aerobics as an official discipline in 1996, all several years before entering its agreement with ANAC.

The director concluded that the petitioner had not established that the competitions where the beneficiary won awards were "world class events." The director also noted the lack of evidence that the petitioner had won awards as an instructor or that students under his tutelage have won nationally or internationally recognized awards.

On appeal, counsel reviews the materials previously submitted and asserts that there are a large number of competitors at Sports Aerobics championships and that the competitions award prizes as high as $1,000. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of*

Obaigbena, 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506.

The agreement between ANAC and FIG suggests that FISAF competitions are not recognized and that FIG views itself as the worldwide governing authority for Sports Aerobics, for which it has organized international competitions since 1994. The record contains no evidence that the petitioner won an ANAC sanctioned event after the agreement with FIG or that he has ever won an award at an FIG sanctioned event.

While the record is somewhat ambiguous regarding the various levels of significance of FISAF, ANAC and FIG, we acknowledge that the record contains evidence that the petitioner has competed successfully at events that have warranted media coverage. Thus, we withdraw the director's finding that the petitioner does not meet 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.*

Initially, counsel referenced a March 18, 2006 letter from [redacted] of Italy's National Aerobics Championship (NAC), confirming that the petitioner was selected by Italy NAC to represent Italy in Los Angeles in July 2006. That letter is not in the record. Rather, the record contains an October 17, 2005 letter from [redacted] affirming the petitioner's participation in Italy NAC events and Sports Aerobic events abroad. She concludes: "ANAC Italy enjoyed his talent for many years with consistent successes." We acknowledge that the record does contain evidence that the petitioner has competed internationally for Italy, although not at FIG sanctioned events.

In response to the director's request for evidence, which specifically requested evidence of the petitioner's actual membership and evidence that the association requires outstanding achievements of its members, counsel references [redacted] 2005 letter and the sentence quoted above. Counsel affirms the prestige of ANAC and also asserts that the petitioner "is a member" of FISAF, another "distinguished organization."

The director concluded that the record does not demonstrate that the petitioner is a member of an association that requires outstanding achievements of its members as judged by nationally or internationally recognized experts.

On appeal, counsel merely reiterates his statements in response to the director's request for additional evidence.

There are three elements to meeting this criterion. First, the petitioner must be a member of an association. Second, the association must require outstanding achievements in the field. Finally, the

achievements of prospective members must be judged by nationally or internationally recognized experts.

The petitioner has not established that participation in FISAF or ANAC sanctioned events constitutes a "membership" as that term is commonly understood. Significantly, counsel asks us to infer membership from comments in letters rather than through the submission of a membership card. While this office has, on a case-by-case basis, accepted Olympic team membership as comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4), Olympic team membership is far more exclusive than being among the large number of athletes qualified to compete internationally for a country at events sponsored by entities of varying distinction.

In addition, the petitioner has not established that mere qualification to compete internationally is an outstanding achievement. As stated above, competing in the major leagues does not create a presumption of eligibility. 56 Fed. Reg. 60899 (Nov. 29, 1991). Thus, we must carefully consider claims that team membership is qualifying.

The ANAC rules submitted by the petitioner reflect that participants in ANAC worldwide events need only have won a local cup challenge, which can be hosted by a health club, gym or recreational center. Such local competitions can even be part of a regularly scheduled aerobics class. In light of the above, we are not persuaded that qualifying to compete at FISAF or ANAC events is an outstanding achievement such that the petitioner's alleged "membership" in these associations is qualifying. While an athlete must continue to compete successfully to move up, at issue for this criterion are the basic "membership" requirements.

Finally, the petitioner had not established that nationally or internationally recognized experts judge whether an athlete may participate at FISAF or ANAC events. Rather, as stated above, winning a local cup challenge can be the original basis of eligibility to compete in ANAC sanctioned events.

In light of the above, we uphold the director's finding that the petitioner does not meet 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.*

Initially, the petitioner submitted stills from television broadcasts of competitions on ESPN, photographs of the petitioner appearing in print publications, a mention of the petitioner's name on Italy NAC's website, coverage of events in which the petitioner was scheduled to participate or had participated that named the petitioner and what is labeled as an interview with the petitioner. The record does not contain the publication name or date for the "interview." A July 26, 2004 article appears in *Il Giorno.* The petitioner also submitted an article he wrote for *Effetto Club* magazine. In response to the director's request for additional evidence, the petitioner submitted evidence that *Il Giorno* is one of Milan's leading newspapers, with a decreasing circulation from 106,071 copies sold in

1996 to only 69,009 sold in 2005. The petitioner failed to submit any circulation data for the other media.

The director concluded, incorrectly, that the article in *Il Giorno* was not accompanied by a certified translation. The director further concluded that the article did not appear to be about the petitioner and that the ESPN broadcasts were not published materials.

On appeal, counsel asserts that the live transmission of competitions in which the petitioner participated on ESPN serves to meet this criterion and that "media" should not be limited to print media. Subsequently, counsel asserts that it would be "difficult to find a more public display of the beneficiaries [sic] work than on ESPN whether as part of a performance with two other people or alone." Counsel further asserts that the mention of the petitioner on Italy NAC's website, "the most prestigious organization of sports aerobics in Italy" serves to meet this criterion as the Internet "is a primary news source and method of acquiring knowledge." Finally, counsel reiterates that the petitioner is discussed in *Il Giorno*, one of Milan's leading newspapers.

Counsel is not persuasive. First, counsel appears to confuse this criterion with the artistic display criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii). At issue for this criterion is not whether any media outlet has televised or pictured a "display" of the petitioner's work, but whether the petitioner has been the subject of journalistic coverage in major media. As the regulatory criteria are designed to demonstrate national or international acclaim, the petitioner must demonstrate national media coverage, either in a nationally distributed publication or, at the very least, coverage in several major regional publications representing, in the aggregate, national coverage.

We do not question that some television coverage can qualify under this criterion provided it is "about" the alien. We concur with the director, however, that the ESPN stills cannot serve to meet this criterion. They represent coverage of a competition, not media coverage of the petitioner individually. As an analogy, a football player featured as the primary subject of a television expose demonstrates far more national acclaim than every National Football League player who, playing for a major league team, is necessarily visible on major television networks. As noted above, playing in the major leagues is not presumptive evidence of eligibility. 56 Fed. Reg. 60899 (Nov. 29, 1991). Thus, we concur with the director that the ESPN coverage is not "about" the petitioner as required under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

In addition, while some Internet coverage may serve to meet this criterion, we cannot ignore that anyone with a computer can create a website. Thus, we must evaluate Internet coverage on a case-by-case basis. The record contains no evidence regarding the traffic Italy NAC's website receives. Moreover, independent journalistic coverage of the alien is far more persuasive than promotional material by the entity sponsoring the competitions at which the petitioner competes. Finally, the petitioner is merely named on this website along with several other athletes. Thus, these materials cannot be considered to be "about" the petitioner.

Finally, *Il Giorno* is documented as a purely local Milan newspaper. The record does not suggest it has a notable circulation outside the Milan area. Moreover, the article merely mentions the petitioner and other athletes. It is not primarily about the petitioner.

In light of the above, we concur with the director that the petitioner has not submitted published materials about himself that have appeared in major media. As such, 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.

Initially, the petitioner submitted a letter from of FISAF Italy. Ms. [redacted] asserts that the petitioner judged a national aerobic championship in 1998. In response to the director's request for additional evidence, the petitioner submits a new letter from asserting that the petitioner passed the requisite examination to be a judge in 1998 and judged "several national Italian competitions." Ms. [redacted] explains that ANAC judges must pass a written and video exam and that "many judges have been top competition winners with sustained national and international championships." Ms. [redacted] notes that after 2005, ANAC judges who wished to continue judging had to be certified by FIG. She does not indicate that the petitioner has been, in fact, certified by FIG. Thus, the record does not support counsel's assertion that the petitioner has been trained to judge competitions according to the rules accepted by the Olympic Committee.

While there may be an overlap between acclaimed athletes and judges, [redacted] does not indicate that judges are selected from a pool of acclaimed athletes. Rather, an applicant to be a judge need only pass a written and video test.

The director concluded that the petitioner had only established having judged a single competition in 1998, which could not be considered evidence of sustained acclaim sufficient to meet this criterion. On appeal, counsel reviews the evidence of record.

Once again, the petitioner's achievements were at events sanctioned by FISAF and ANAC prior to its association with FIG, which was concurrently sponsoring its own competitions in Sports Aerobics. Nevertheless, contrary to the director's conclusion, the record does contain affirmation that the petitioner judged "several" national events. [redacted]s letter would have been more persuasive had she named the specific events and supported her assertion with programs listing the petitioner as a judge. We are satisfied, however, that the petitioner minimally meets this criterion.

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

Initially, counsel asserted that the petitioner meets this criterion through his appearances on ESPN, his awards and the "accolades from his peers." In response to the director's request for additional

evidence, counsel references a letter from [redacted] of the U.S. Competitive Aerobics Federation (USCAF), who states that the petitioner has demonstrated athleticism and creativity. Counsel further notes that [redacted] refers to the petitioner's "unique" talent.

The director concluded that the petitioner had not demonstrated his impact on others in the field. On appeal, counsel reiterates previous assertions, noting that also refers to the petitioner's talent as "unique."

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. To be considered a contribution of major significance in the field of Sports Aerobics, it can be expected that the petitioner would be able to show a demonstrable impact on the field.

Counsel's initial assertion that the petitioner's televised performances and awards serve to meet this criterion is not persuasive. We are not persuaded that every athlete who participates in a televised sport, which includes major league sports, minor league sports in some cases and numerous college leagues, has made a contribution of major significance to that sport. In addition, the regulations already include an awards criterion, which we acknowledge the petitioner meets. We are not persuaded that meeting the awards criterion is presumptive evidence that the alien also meets this criterion. To hold otherwise would render the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three separate criteria meaningless.

We acknowledge that [redacted] characterizes the petitioner as have "unique talent and skill." In addition, [redacted] references the petitioner's "unique talent and skill." [redacted] mentions the petitioner's "amazing creativity." Other references, including Sports Aerobics champion [redacted] and [redacted], owner of a fitness club in Milan where the petitioner worked as an instructor, also use the phrase "unique talent and skill."

While we do not question the sincerity of the petitioner's references, it remains that, as stated above, it is not enough that the petitioner's work be original. Moreover, the extent of the petitioner's originality is not documented. For example, the ANAC rules provide for specific elements to be included in routines. Rule 3.5(C) provides that new elements may be added and assigned a difficulty value if introduced by an athlete and evaluated by the panel judges and ANAC headquarters. The record contains no evidence that the petitioner initiated a "new element" in Sports Aerobics that has been adopted by ANAC and assigned a difficulty value.

Moreover, the record does not establish that any of the petitioner's originality has had a major impact on the field. The record includes no evidence that the field of Sports Aerobics has evolved in a major way due to the petitioner's original contributions to that field. Thus, we concur with the director that the petitioner has not demonstrated that he meets this criterion.

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

Initially, counsel asserted that the ESPN coverage of events in which the petitioner participated and the published material discussed above serve to meet this criterion. In the request for additional evidence, the director noted that this criterion applies to the arts. In response, counsel asserts that there is "nothing in the regulations that indicates this criterion only applies to the arts" and that the director's "narrow interpretation is contrary to the intention of the legislature." Counsel then asserts that a statute must be interpreted in favor of the applicant, but provides no legal authority for that proposition. Counsel then asserts that Sports Aerobics includes "artistic expression." Counsel concludes that a national competition is a showcase of ability.

The director concluded that this criterion does not apply to the petitioner. On appeal, counsel reiterates the assertions made in response to the request for additional evidence.

We concur with the director. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) is not ambiguous. We are satisfied that "artistic" modifies both "exhibitions" and "showcases." Thus, this criterion is clearly applicable almost exclusively to artists. Significantly, this language appears not in the statute, as implied by counsel, but in USCIS' regulations. USCIS is entitled to interpret its own regulations and we are satisfied the director's interpretation was not only rational but is consistent with our own interpretation.

The petitioner's sports competitions, and their sporting nature is clear from their broadcast on the sports station ESPN, are not artistic exhibitions or showcases. We have already considered the petitioner's awards at these competitions above. Their broadcast on ESPN was considered in evaluating whether the awards were nationally or internationally recognized. The broadcast, however, in and of itself, is not evidence to meet this criterion. We note that athletic competitions are routinely attended by fans or televised. We are not persuaded that this fact transforms an athletic competition into an artistic exhibition or showcase.

Finally, the published material has already been considered under the published material criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii). We are not persuaded that evidence directly related to but insufficient to meet that criterion must be considered under this criterion, to which it does not appear to directly relate.

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

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

Initially, counsel referenced the ESPN broadcasts and other photographs of competition as evidence to meet this criterion. Counsel did not explain how this evidence relates to this criterion. In response to the director's request for additional evidence, counsel asserts that the petitioner played a leading role

Italy NAC. While counsel affirms the distinguished reputations of ESPN and Italy NAC, he merely asserted without explanation that the petitioner played a critical role for these entities.

The director concluded that the petitioner had not been hired to fill a specific role and did not otherwise fill an official role with either ESPN or Italy NAC. On appeal, counsel erroneously states that the director accepted the petitioner's critical role with the above associations but concluded that they were not distinguished. Counsel then affirms their distinguished reputation. Counsel mischaracterizes the director's concerns as stated in the notice of denial.[3]

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. We concur with the director that competing in competitions broadcast by ESPN does not constitute a leading or critical role for ESPN. Similarly, the petitioner's competition in Italy NAC events is not evidence of his selection to play a leading or critical role for that association. Thus, we uphold the director's ultimate conclusion that the petitioner has not established that he 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.

Counsel asserts that the ESPN broadcasts serve to meet this criterion because they attracted high ratings. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. In response to the director's request for additional evidence, which stated that this criterion does not apply to athletes, counsel asserts that the regulation does not support that interpretation and that the "legislation" does not specifically exclude athletes. Counsel also reiterated that Sports Aerobics includes artistic elements.

The director concluded that the record did not support a claim to meet this criterion. On appeal, counsel reiterates previous assertions.

Once again, the plain language of the criterion is clear. It requires evidence of commercial success in the performing arts. The types of evidence listed, box office receipts and recorded media sales are evidence relating to the performing arts. Even if we were to conclude that evidence of commercial success as an athlete could serve as comparable evidence to meet this criterion, the petitioner must demonstrate personal commercial success, not merely an association with another entity that enjoys commercial success. The broadcast of competitions in which the petitioner participated is not evidence of the petitioner's personal commercial success. Moreover, the petitioner did not submit box office receipts or evidence of recorded media sales as required by the regulation at 8 C.F.R. § 204.5(h)(3)(x).

[3] The director does appear to acknowledge the petitioner's role for various teams in the request for additional evidence, but the director's final conclusions as stated in the denial represent his ultimate conclusions.

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

Comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4)

Initially, counsel asserted that the reference letters constitute comparable evidence to the regulatory criteria. The regulation at 8 C.F.R. § 204.5(h)(4) provides that comparable evidence may be submitted where the regulatory criteria at 8 C.F.R. § 204.5(h)(3) do not "readily apply."

The petitioner has not established that the regulatory criteria are not readily applicable. In fact, the petitioner claims to meet eight of ten criteria, of which an alien need meet only three. As discussed above, we are persuaded that the petitioner meets two of those criteria. While some of the other criteria are not applicable, there are other criteria that are applicable but the petitioner simply does not meet them.

Finally, even if the regulatory criteria were not readily applicable, the petitioner has not demonstrated that inherently subjective opinion letters are comparable to the objective evidence required under the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).

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.

For the reasons discussed above, we find that the petitioner has minimally established that he meets two criteria. According to the regulation at 8 C.F.R. § 204.5(h)(3), an alien must meet at least three to be eligible for this exclusive classification. The record falls far short of establishing that the petitioner meets a third criterion. In fact, as discussed above, even the value of the evidence found sufficient to meet the criteria at 8 C.F.R. § 204.5(h)(3)(i) and 8 C.F.R. § 204.5(h)(3)(iv) is somewhat reduced given the remaining questions regarding how competitions sanctioned by FISAF and ANAC, prior to 2005, compared with those sanctioned by FIG.

Review of the record, however, does not establish that the petitioner has distinguished himself as a Sports Aerobics competitor, instructor or choreographer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a Sports Aerobics competitor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.