U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 05 2009

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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 with a finding of fraud and material misrepresentation.

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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On March 31, 2009, this office advised the petitioner of derogatory evidence that compromised the petitioner's eligibility claims. This office further notified the petitioner of an intent to dismiss the appeal and make a formal finding of fraud. The petitioner has now responded. For the reasons discussed below, the petitioner has not overcome our concerns.

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a kickboxer. The record is supported with award certificates, foreign newspaper articles, certificates of referee status and reference letters. The director found the evidence insufficient and the petitioner appealed the decision to this office. On March 31, 2009, this office advised the petitioner of the following adverse information.

Specifically, the AAO noted that the petitioner had submitted certificates issued to the petitioner in 1994, 1995 and 1996 in Tbilisi and an article about the petitioner's asylum claim indicating that he was in hiding during this time, having run away from his home in Tbilisi in 1994. The published federal circuit court opinion in the petitioner's case, *Sevoian v. Ashcroft*, 290 F. 3d 166, 168 (3rd Cir. 2002), provides more detail regarding the petitioner's claim to have "fled" his home in Tbilisi in 1995, hiding at his uncle's house. Significantly, the petitioner claimed to have remained at his uncle's house "in partial seclusion" until fleeing to the United States in 1997. Thus, the AAO concluded that the petitioner's Tbilisi awards from 1995 and 1996 are inconsistent with his asylum claim to have fled Tbilisi and lived in "partial seclusion" from 1995 through 1997.

The AAO further noted that the petitioner had also submitted the results of Extreme Challenge 75 at Sovereign Bank Arena in Trenton, New Jersey on March 23, 2007. This event was sanctioned by the U.S. Kick Boxing Association (USKBA). The petitioner is listed as having defeated Garrett Carmody. The AAO advised that the results of this competition are available at http://www.mixedmartialarts.com/mma.cfm?go=stats.fightCard&eid=eb5c4547-7fef-4b81-8420-93b5a40b5cb, accessed February 4, 2009 and incorporated into the record of proceeding. These official results, which indicate that they are "Verified by Commission, New Jersey Athletic Control Board," contain the exact same names except that they list [redacted] as defeating [redacted] The petitioner is not listed as a competitor. Thus, the AAO concluded that the document submitted by the petitioner does not appear to be authentic.

Similarly, the petitioner submitted a document from the Professional Kickboxing Federation U.S.A. (PKFUSA). The document lists the petitioner, representing New Jersey, as the super-featherweight world champion, [redacted]t as the U.S. Champion and 10 contenders. PKFUSA's website, http://www.pkfusa.com/pkf_003.htm, (accessed February 12, 2009 and incorporated into the record of proceeding) provides the same list. The names of the contenders are identical; however, Mr. [redacted] is listed as the World Champion and the U.S. champion position is listed as "vacant." The petitioner's name does not appear on the list. The AAO acknowledged that the year is not listed

but noted that the website indicates that it was last updated January 15, 2005. Thus, the AAO questioned the authenticity of the document submitted by the petitioner.

The AAO advised the petitioner that the discrepancies discussed above raise serious concerns regarding the credibility of the documentation discussed above and the remaining evidence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Thus, the AAO advised that the petitioner could not overcome the above findings simply by offering a written explanation. Moreover, the AAO advised that it would obviously not accept any photocopied documentation or letters as evidence to overcome the above derogatory information. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), we have the discretion to request the originals of any photocopies submitted.

In response, the petitioner asserts that he provided his asylum attorney with his 1995 and 1996 award certificates and is not sure why his attorney did not use them. The petitioner continues to maintain that while in seclusion, he would return to Tbilisi to fight. Regarding the extreme challenge, the petitioner merely states that he provided the information sent to him by "the association" by electronic mail and does not have the original. Finally, the petitioner notes that the PKFUSA website had not been updated since 2005 and that the evidence of his ranking as world champion dates from 2007.

First, the petitioner's assertions regarding the Extreme Challenge do not overcome the evidence that the petitioner did not fight [redacted] as claimed.[1] The petitioner does not identify "the association" that supplied him with the results showing his defeat of [redacted]. Regardless, the petitioner knows whether or not he competed at this event. Thus, even assuming the results he submitted were supplied to him by USKBA, he should have been aware that the inclusion of his name as the boxer who defeated [redacted] was false. **The petitioner signed the petition affirming that "the evidence** submitted with it are all true and correct."

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Given the submission of the fraudulent information about the Extreme Challenge competition, the petitioner's credibility is seriously compromised. Thus, his assertion that he continued to compete at highly public competitions while also in fear for his life is highly suspect, especially as the petitioner does not claim to have shown up unannounced. Rather, he submitted an April 12, 1995 newspaper article purportedly promoting his upcoming fight in Tbilisi. Finally, while we acknowledge that the PKFUSA website had not been updated since 2005 and the petitioner

[1] **In fact, at least three other websites confirm that it was** [redacted] who defeated [redacted]. *See* www.mmawiz.com/events/3515:Extreme_Challenge, www.fcfighter.com/news/Mar%202007 and www.combatinthecage.com/pro-mma/old-proresults.php, accessed May 28, 2009 and incorporated into the record of proceeding. We have been unable to locate a single website that lists the petitioner as the boxer who fought [redacted] at this event.

provided 2007 rankings, this document is still questionable. The petitioner has not explained why all the contenders would remain the same from 2005 to 2007. In addition, the petitioner is listed as representing New Jersey; yet while he is listed as the "World" champion, another individual is listed as the U.S. champion. The materials also fail to explain the difference between the "world" champion and the "international" champion. Moreover, the petitioner submits a 2004 flier announcing the petitioner's attempt to secure the PKFUSA featherweight world championship. Thus, it is still not explained why the petitioner is not at least listed as a contender on the website, last updated in 2005. Finally, the failure to update the rankings on the website for four years raises concerns regarding the significance of PKFUSA as an association or its rankings.

In light of the above, the petitioner has not resolved the concerns raised by the AAO in its March 31, 2009 letter. We will consider all of the evidence of record below as it relates to the regulatory criteria.

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). Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (September 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a $1 million cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

Even if all of the petitioner's prizes and awards were credible, the petitioner has not established that the competitions in Tbilisi are internationally recognized as one of the top awards in kickboxing. In addition, the petitioner has not established that he was ranked by PKFUSA as the "world champion" prior to the date of filing. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Regardless, the petitioner has not established that PKFUSA, which has not updated its website in four years and, according to fliers submitted by the petitioner, holds its competitions in hotels rather than stadiums, organizes competitions recognized internationally as one of the top prizes in kickboxing.

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 never explained exactly which criteria he claims to meet. The record contains evidence relating to the following criteria.[2]

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

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 the following Georgian awards:

1. First place "among 54 in kickboxing in Georgia" on March 10, 1994;

2. First place "International Championship in Boxing" in Tbilisi on October 3, 1994;

3. Newspaper articles regarding a 1995 fight in Tbilisi, promoting the fight and then reporting the results, including the petitioner's win in the 51-54 kg category.

4. A "Sertificate" from the "All Eurazian Kikboxing Caucasian Centre" of the "Oktagon Federation" in Tbilisi dated in 1996. The petitioner submits the original of this certificate on appeal. While the original certificate bears an original seal and original handwriting, it is a photocopy of a creased certificate. The fighters pictured on the original certificate submitted have been colored with magic marker.

5. A Kickboxing "Diplom" from the All-Eurasian Kickboxing Federation awarded to the petitioner as the "Winner of the International Championship of the Knights Tournament" dated April 6, 1997.

In addition, the petitioner submitted a self-serving list of fights from March 3, 2001 and September 25, 2005. Further, [redacted] of the World Kickboxing Organization (WKO), asserted that the petitioner was ranked number one in the featherweight category for the WKO and had twice fought at Madison Square Garden "representing the American Kickboxing Team." Similarly, [redacted] President of the Worldwide Kickboxing Federation (WWKF), and [redacted] President and Chairman of USKBA, both assert that the petitioner is a top ranked fighter with their organizations. Finally, [redacted] asserts that the petitioner won awards as a member of the Russian National Team.

In response to the director's request for additional documentation, especially covering the petitioner's residence in the United States, the petitioner submitted what purports to be the results of the March 23, 2007 Extreme Challenge 75 and the upcoming contests slated for Extreme Challenge 78 on June 9, 2007. As stated above, the official results for Extreme Challenge 75 as posted on the Internet reveal that the petitioner did not compete at this event. As stated above, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Given the petitioner's failure to overcome the evidence discovered by this office, we have more carefully reviewed the evidence for Extreme Challenge 78. We note that the petitioner's name is in a

different typeface than the remaining names.[3] Finally, the petitioner submitted what purport to be photographs of him defending his "title" in November 2006. The photographs reveal that this bout did not take place in a stadium.

Finally, the petitioner submitted what purports to be the April 2007 list of PKFUSA champions and contenders. As stated above, this is a questionable document. Moreover, the fact that PKFUSA has not updated its website in four years raises concerns about its national prestige. In fact, the flier the petitioner submitted for the 2004 PKF World Championships reveals that it was held at the Newark Airport Marriott Hotel "In front of Terminal B." We further note that PKFUSA operates from the same address in Elizabeth, New Jersey as America's Finest Karate and Kickboxing Academy, where the petitioner trains and purportedly works.[4] Simply titling a competition a "world" championship does not necessarily demonstrate that the competition is recognized worldwide.

Even if the evidence of the petitioner's U.S. accomplishments were credible, most of them postdate the filing of the petition and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. On appeal, the petitioner submits a letter from [redacted] asserting that the petitioner "currently holds a USKBA Full Contact Kickboxing Championship Title and has held that title since 2001" and Internet materials from USKBA's website confirming that the petitioner's scheduled 2001 bout to defend his title did not occur due to an illness. The record contains no evidence supporting [redacted] assertion that the petitioner competed with USKBA after 2001 and retained his title. The record also lacks the awards or press coverage of the events discussed by Grandmaster [redacted]

Even if the petitioner's awards in Tbilisi were credible, the petitioner must demonstrate sustained national or international acclaim. The petitioner claims to have been competing in the United States since 2001. For the reasons discussed above, however, the record does not contain consistent and credible evidence documenting the petitioner's alleged U.S. awards. Even if the petitioner's awards at PKFUSA events were credible, the record does not establish that PKFUSA manages nationally recognized competitions. Rather, they appear to be somewhat local, holding their competitions in hotels rather than large stadiums.

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[3] We have also been unable to confirm that the petitioner actually competed at this event. *See* the following:

http://web.wrestling-radio.com/?view=newsitem&hline=2116,
www.combatinthecage.com/pro-mma/oldproresults.php,
www.sherdog.com/event.php?search=yes&event_id=5281, and
www.mmapool.com/eventinfo.php?id=21102

(All accessed May 22, 2009 and incorporated into the record of proceedings.)

[4] On appeal, the petitioner submits a list of AFKKA schools. While the petitioner is listed as an instructor at the Elizabeth, New Jersey location, AFKKA's website does not confirm the petitioner's position there. *See* http://www.afkkajc.com/dojo/dojos.htm (accessed May 22, 2009 and incorporated into the record of proceedings).

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

The record contains 1995 newspaper articles in *Kavkasioni,* a Georgian newspaper. These articles are about an event at which the petitioner allegedly competed; they are not about the petitioner. Moreover, they do not demonstrate sustained national or international acclaim as of 2006 when the petition was filed. The petitioner also submitted recent newspaper articles in what appear to be U.S. Russian-language newspapers. While these articles are about the petitioner, the petitioner has not submitted any evidence of the circulation of these newspapers or other evidence that they constitute professional or major trade publications or other major media.

In light of the above, the petitioner has not demonstrated 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.

The petitioner submitted a "Certificate of Rank" from PKFUSA listing the petitioner's rank as "PIF International Referee." The record lacks evidence that the petitioner actually judged a kickboxing match. Moreover, he was designated a qualified referee by the organization that runs the gym where he trains and possibly coaches. Thus, this designation is not indicative of or consistent with national or international acclaim.

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted letters attesting to his payments for bouts and coaching. The petitioner, however, did not submit evidence of his actual earnings, such as Forms W-2 and tax returns. Moreover, the record lacks data regarding the high end remuneration for kickboxers nationally.

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

Review of the record, however, does not establish that the petitioner has distinguished himself as a kickboxer 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 kickboxer, 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.

Beyond upholding the director's decision, we are also making a formal finding of fraud. As stated above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591-92. In this case, we find substantial and probative evidence that the petitioner submitted falsified material in support of the petition. The petitioner signed the Form I-140 under penalty of perjury and attested that he is solely responsible for submission of evidence with this petition.

Section 212(a)(6)(C) of the Act provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant petition and submitting evidence purporting to document the petitioner's successful fight at the Extreme Challenge 75 on March 23, 2007, the petitioner has sought to procure a benefit provided under the Act using fraudulent documents. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the above document is fraudulent, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

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

ORDER: The appeal is dismissed with a finding of fraud and willful misrepresentation of a material fact on the part of the petitioner, [redacted]

FURTHER ORDER: The AAO finds that the petitioner, [redacted] knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.