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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 22 2009

SRC 09 011 50328

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:

SELF-REPRESENTED

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).

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Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner argues that he submitted ample evidence demonstrating that he qualifies for the classification sought and that the director's decision "is absolutely unacceptable."

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, 60898-99 (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):

> Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her

achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) 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;

(iv) 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;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

This petition, filed on October 15, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a Sumo wrestler. The petitioner submitted a letter from [redacted], United States Sumo Federation,[1] stating:

[1] The United States Sumo Federation is the "official governing body for amateur Sumo in the United States." *See* http://ussumofederation.org/, accessed on October 5, 2009, copy incorporated into the record of proceeding.

> I was . . . able to watch [the petitioner] wrestle in a tournament I hosted this past April . . . in Los Angeles. As a heavy weight, [the petitioner] did very well taking third place to a former professional Sumotori from Mongolia and a college champion from Japan.
>
> [The petitioner] is, in fact, an excellent amateur Sumo wrestler with a lot of training, experience and competitions from the European Sumo Union. Now in the United States, he continues his Sumo training and often trains with American Sumo wrestlers in New York and New Jersey.

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 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 pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[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 a plaque from the Sumo Grand Prix Los Angeles amateur competition (April 2008) reflecting that he placed third in the "Men's Open Division." The petitioner also submitted a photocopy of a bronze medal from the European Sumo Championship (June 2007) and an April 29, 2008 letter from the president of the Georgian Sumo Federation stating that the petitioner earned a bronze medal at that championship "among the youth." The petitioner's initial submission also included a June 18, 2008 letter from the president of the Georgian Sumo Federation stating that the petitioner was "a winner of the fifth place of the world championship." The record, however, does not include evidence from the world championship's organizers showing that the petitioner received a prize or an award at that event. Rather than submitting primary evidence of his prize or award, the petitioner instead submitted a third-party letter mentioning his fifth place at the world championship. The June 18, 2008 letter does not specify petitioner's competitive category and whether his event was amateur or professional. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). A petition must be filed with any initial evidence required by

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

the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

With regard to an awards won by the petitioner in amateur or youth competition, we do not find that such awards indicate that he "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). There is no indication that the petitioner faced competition from throughout his field, rather than being limited to his approximate age group or skill level within the field. USCIS 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.[3] Likewise, it does not follow that a Sumo wrestler who has had success in amateur or youth competitions should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Furthermore, regarding the petitioner's third place at the Sumo Grand Prix Los Angeles, his bronze medal at the European Sumo Championship, and his fifth place at the world championship, the record does not include supporting evidence such as the significance and magnitude of these competitions to establish that prizes awarded at the competitions are nationally or internationally recognized.[4] The petitioner submitted some photographs and his competitor identification badges from the preceding competitions, but such documentation, without evidence indicating the number of entrants who competed in the petitioner's category or their level of experience, is not sufficient to establish that awards received at these competitions are nationally or internationally recognized. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence establishing that the petitioner's awards were received in top level Sumo competitions and that they had a significant level of recognition beyond the competitions where they were presented.

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[3] While we acknowledge that a district court's decision is not binding precedent, 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 USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

[4] National, international, and regional competitions typically issue event programs listing the names of the participating contestants and the order of events. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors. The petitioner, however, has provided no evidence of the official comprehensive results for the competitive events in which he claims to have received awards.

Finally, as it relates to the petitioner's certificate from his instructors at International Karate-Do Georgia stating that he "passed the test for 10 Kyu," this award reflects institutional recognition for karate skill rather than a nationally or internationally recognized prize or award for excellence in Sumo wrestling. We note that petitioner's advancement to the 10th level was based on his successful completion of a karate skills test. Such proficiency advancements are inherent to the martial arts and they represent standardized progression to the next skill level. Accordingly, the petitioner has not established that his successful mastery of required karate skills and attainment of a higher proficiency level equates to his receipt of a nationally or internationally recognized prize or award for excellence in Sumo wrestling.

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

The June 18, 2008 letter from the president of the Georgian Sumo Federation states that the petitioner "is a former member of the national team of Georgia in Sumo." The record, however, does not include supporting evidence showing that membership on this team required outstanding achievements. We acknowledge that membership on an Olympic team or a major national team such as a World Cup soccer team can serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive. Without documentary evidence showing the selection requirements for the Georgian national Sumo team, we cannot conclude that the petitioner meets the elements of this regulatory criterion.

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

We acknowledge the petitioner's submission of reference letters from individuals such as the President of the United States Sumo Federation, the President of the Georgian Sumo Federation, and the Chief Trainer of the Georgian national team briefly discussing the petitioner's competitive accomplishments. The record, however, lacks evidence showing that the petitioner has made original athletic contributions that have significantly influenced or impacted his sport. With regard to the petitioner's athletic achievements, the reference letters do not specify exactly what the petitioner's original contributions in Sumo wrestling have been, nor is there an explanation indicating how any such contributions were of major significance in his sport. 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. While the individuals from Georgia describe the petitioner "as a

sportsman with a great future," there is no evidence demonstrating that his athletic accomplishments equate to original contributions of major significance in the field. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. *See* 8 C.F.R. § 204.5(h)(2).

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of that one would expect of a Sumo wrestler who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's accomplishments have been unusually influential, highly acclaimed throughout his sport, or have otherwise risen to the level of original contributions of major significance, we cannot conclude 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 a copy of his contract with Big Boy Productions, LLC dated April 23, 2006. Under item 5, Compensation, the contract states:

> For performance of Player's services and all other promises of Player, Big Boy will pay Player a salary as follows:
>
> $500/week for the 2005/2006 year for each week Player performs
> $750/week for the 2006/2007 year for each week Player performs
> $1000/week for the 2007/2008 year for each week Player performs
> $1000/week for the 2008/2009 year for each week Player performs
> $1200/week for the 2009/2010 year for each week Player performs

While the petitioner submitted a copy of his contract, the record does not include evidence (such as payroll records, a Form W-2, or income tax returns) showing the petitioner's actual earnings for any specific period of time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. at 158, 165. Nevertheless, the plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis

for comparison showing that the salary amounts specified in his contract were significantly high in relation to those of others in his field. Without a proper basis for comparison and objective evidence showing his actual earnings during a sustained period predating the filing of the petition, we cannot conclude that the petitioner has commanded a high salary or other significantly high remuneration for services in relation to others in his field. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.