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FILE: [REDACTED]
EAC 04 064 53580

Office: VERMONT SERVICE CENTER

Date: OCT 21 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maig Plunson

8 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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. 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.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on January 2, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Go Player." Counsel states: "Go is an ancient strategic board game originating in China more than 4,000 years ago. It's played today by millions of people around the world."

The petitioner submitted an article from the August 1, 2002 issue of *The New York Times* which states: "The game is played on a board divided into a grid of 19 horizontal and 19 vertical lines. Black and white pieces called stones are placed one at a time on the grid's intersections. The object is to acquire and defend territory by surrounding it with stones."

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).

On appeal, counsel states: "We believe that the facts that the petitioner placed the third at the Second North American Toyota/Denso Oza Championship in 2004 and the third in 2003 U.S. Go Congress constitutes conclusive evidence that he qualifies as an alien of extraordinary ability pursuant to 8 C.F.R. section 204.5(h)(3) [sic]." The petitioner's third place in the "Eastern Division" at the American Toyota/Denso Oza Championship in 2004 occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Furthermore, we cannot ignore that placing third in the "Eastern Division" is reflective of regional recognition rather than national or international recognition.

We do not find that the petitioner's third place at the 2003 U.S. Go Congress constitutes a major, internationally recognized award. Further, the 2003 U.S. Go Congress competition is national in scope rather than international in scope (as required by the regulation permitting eligibility based on a one-time achievement). The regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Examples of one-time awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields. Neither of the petitioner's "third place" awards meets this standard. These awards will be further addressed below as lesser nationally or internationally recognized prizes or awards.

Barring the alien's receipt of a major, internationally recognized 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 pertaining to the following criteria.

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

The petitioner's third place at the 2003 U.S. Go Congress open competition adequately satisfies this criterion.¹ As noted above, the petitioner's third place in the "Eastern Division" at the Second North American Toyota/Denso Oza Championship in 2004 was a regional award (rather than a national award) and occurred subsequent to the petition's filing date. *See Matter of Katigbak* at 45, 49.

Published materials 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.

¹ Documentation in the record also refers to this competition as the "American Go Association's 2003 U.S. Open Go Tournament" in Houston, Texas.

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 or from a publication with limited distribution. 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.²

The petitioner submitted a brief article (only seven sentences) appearing in *The Tri-State News Weekly*, a Chinese-language newspaper published in New Jersey. Aside from the petitioner not providing the name of the author of this article (as required by the regulation), it has not been shown that this publication has a substantial national readership beyond Chinese language readership in New Jersey and two of its neighboring states. There is no specific data regarding *The Tri-State News Weekly's* volume of U.S. readership. Because the overwhelming majority of the U.S. population does not read or comprehend Chinese, it has not been shown that such a publication rises to the level of "major media."

The petitioner also submitted local tournament results published in the "Scoreboard" section of the Spring 2002 and Spring 2003 issues of *American Go Journal*.³ Among these results, the petitioner is listed as placing third twice at the "New Jersey State Championships" (page 44 of the Spring 2002 issue and page 37 of the Spring 2003 issue). Clearly the petitioner is not the primary subject of material presented. We cannot ignore that numerous other Go players from various tournaments around the country are similarly listed in the Scoreboard section. Winning a state tournament is not evidence of national or international acclaim. In addition, in the "Ratings" section of the Spring 2003 issue (page 45), the petitioner is listed as the 12th ranked player according to data compiled by the journal's ratings editor and American Go Association statistician. Simply having one's name included in an extensive list in this manner does not constitute qualifying "published material about the alien." In the preceding instances, the material does not single out the petitioner from the other amateur players listed, nor does it offer any substantive discussion about his extraordinary achievement or national acclaim as a Go player. Furthermore, the petitioner has not provided evidence regarding the volume of distribution of the *American Go Journal*. Without quantitative data showing its significant national or international distribution, we cannot conclude that it qualifies as a "major trade publication."

The petitioner submitted the 2003 Annual Report for the American Go Association which states (at the bottom of page nine) that the petitioner will chair the "Ing Grant Management" Committee. The 2003 Annual Report is about the association's financial status rather than the petitioner or his individual achievements. Nevertheless, there is no evidence showing that this report constitutes "published" material "in professional or major trade publications or other major media." Furthermore, we cannot ignore that the petitioner seeks classification as a "Go player" not as a financial grant manager.

² 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, cannot serve to spread an individual's reputation outside of that county.

³ This section of the journal posts the results for local Go tournaments such as the "Pennsylvania Open" and the "Denver Fall Open."

Counsel asserts that an American Go Association website listing the petitioner “as the Chairman of Ing Fund Management” should also be considered under this criterion. Inclusion on a list of approximately 30 officers and volunteers of the American Go Association is not qualifying “published material about the alien.” If the petitioner himself is not the primary subject of the material, then it fails to demonstrate his individual acclaim. Furthermore, without quantitative evidence showing that the website listing the petitioner has substantial national readership, we cannot conclude that it qualifies as “major media.”

In this case, there is no evidence showing that the petitioner has earned sustained acclaim in the national media of the United States or China.

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.

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that “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.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. For example, refereeing a professional Go competition at the national level (such as the national finals of the American Toyota/Denso Oza Championship) is of far greater probative value than refereeing a local amateur competition involving children.

The petitioner submitted a December 18, 2003 letter from [REDACTED] Go School, Piscataway, New Jersey. She states: “[The petitioner] . . . served as Judge for Youth Group at 1st [REDACTED] Go Tournament.” Aside from this single sentence, the December 18, 2003 letter provides no further information regarding the above “Youth Group” competition.

On appeal, the petitioner submits a second letter from [REDACTED] dated December 21, 2004, who identifies herself this time as a “9-dan Professional Go Player.” She states:

I would . . . like to certify that [the petitioner] served as a referee for the First [REDACTED] Youth Go Tournament, a national competition organized by me and named in my name. This competition is a national competition and is the only one of its kind in the United States. The level of competition represents the highest among young Go players in the country. I also certify that all the referees for this competition are top Go players in the United States and [the petitioner] was chosen as a referee because he is one of the best in the country.

The record, however, contains no evidence to support [REDACTED] assertions. For example, national level competitions typically issue event programs listing the order of events, the names of all of the participating players, the teams or locations which the players represent, and their competitive rankings. 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 such evidence to support [REDACTED]’s assertions in regard to the First [REDACTED] Youth Go Tournament. Furthermore, there is no evidence showing that this competition fielded a significant number of top Go players from throughout the U.S. (rather than mostly local youths from New Jersey). Nor is there supporting evidence listing the other referees and their respective Go

rankings. We cannot ignore the statute's demand for "extensive documentation" of sustained national or international acclaim. We note the absence of published material or national publicity surrounding the First [REDACTED] Youth Go Tournament. Evidence in existence prior to the preparation of the petition is of greater weight than letters of support prepared especially for submission with the petition. Without contemporaneous evidence showing that the tournament involved top players from throughout the country (rather than local children), we cannot conclude that the petitioner meets this criterion. Furthermore, we note that the petitioner claims eligibility under this criterion based on his refereeing of only one youth tournament. The statute and regulations, however, require the petitioner's acclaim to be *sustained*. We find that the petitioner's limited and recent referee activity is not indicative of *sustained* national or international acclaim.

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

The petitioner submitted evidence of a seven-sentence commentary posted on the April 14, 2003 version of the *American Go E-Journal*. We do not find that one brief game commentary constitutes "authorship of scholarly articles." Nevertheless, there is no evidence of the field's reaction to this brief commentary, nor any indication that it was widely viewed as significantly influential. Furthermore, without quantitative evidence showing that the *American Go E-Journal* has significant national or international readership, we cannot conclude that it qualifies as a "major trade publication."

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

The record contains evidence showing that the petitioner was selected by the officers of the American Go Association to serve as Chair of the Ing Grant Management Committee. There is no evidence showing that the petitioner is an actual employee of the American Go Association. According to the American Go Association's Annual Report, the Ing Grant was for \$80,000 in 2003 and \$70,000 in 2004. There is no indication that the petitioner held final authority over the distribution of this small grant. We cannot ignore that the petitioner's relationship to that of the Board of Directors (7 members) and the Officers (President, Secretary, Treasurer and Vice President) of the American Go Association was that of a subordinate. The record contains no evidence showing the extent to which the petitioner has exercised substantial control over personnel or operational decisions executed on behalf of the American Go Association. Nor is there evidence indicating that the petitioner's role was of significantly greater importance than that of the board members or executive officers, or the numerous other individuals who volunteer to serve for this association.

On appeal, counsel asserts that the petitioner fulfills this criterion as the "founder, organizer and coach for the Highland Park Go Club in New Jersey." The petitioner's appellate submission includes a listing of American Go Association Chapters indicating that the petitioner is the "contact person" for the Highland Park Go Club chapter (which meets "every other Tues." for three hours from "Sept.-May"), but there is no evidence of the petitioner's role as its founder, organizer and coach. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, there is no indication that the Highland Park Go Club has distinguished itself at the national level by winning

national team championships or consistently producing individual Go players who have won top national titles at the professional level.

In sum, the evidence is not adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim

On appeal, counsel states that the letters of support from past and current officials of the American Go Association constitute other comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). This regulation allows for the submission of comparable evidence, but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien’s field. Of the ten criteria, more than half readily apply to the petitioner’s occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

While the letters of support describe the petitioner as a skilled Go player and valued member of the American Go Association, they are not sufficient to show that the petitioner is nationally or internationally acclaimed. With regard to the personal recommendation of individuals from the American Go Association, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of this association. If the petitioner’s reputation is limited to his affiliated institutions, then he has not achieved national or international acclaim.

In this case, we find that the evidence satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In addition to finding that the petitioner had failed to satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the director’s decision stated:

Section 203(b)(1)(A)(ii) [of the Act] requires that the alien seek to enter the United States to continue work in the area of extraordinary ability. . . . [The petitioner] was playing in amateur level Go tournaments and was apparently serving as the Chair of the Ing Fund Committee on an unpaid basis. There is no indication that Go playing ever constituted the [petitioner’s] “work,” and despite the fact that an employment-based classification is being requested, the record does not suggest that this will be the case in the future.

On appeal, counsel states: “We contend that the Center Director’s above statement is an overly restrictive and incorrect interpretation of the requirement that a beneficiary of the EB-1 extraordinary ability petition will continue to work in the field of endeavor in the United States.” Counsel notes correctly in his appellate brief that a job offer is not required for this classification. The director’s decision, however, does not cite the absence of a job offer as a basis for denial.

As noted by the director, section 203(b)(1)(A)(ii) of the Act requires that “the alien seeks to enter the United States to continue work in the area of extraordinary ability.” The petitioner’s intention to continue playing Go is not in dispute; the record shows that the petitioner has recently participated in various competitions. More relevant is the issue of whether employment as a Go player will be the petitioner’s primary occupation and

source of income. Because the petitioner seeks an employment-based immigrant classification based on his Go playing skills, it is reasonable to require evidence that the petitioner has been and will continue to support himself principally as a Go player through competitive prize money (rather than competing in his spare time while supporting himself through unrelated employment). We cannot ignore the substantial evidence indicating that there are a number of professional Go players in the United States who earn significant sums of prize money at both the national and international level.⁴ Furthermore, in a December 30, 2003 letter accompanying the petition, counsel observes: “Millions of dollars in prize money change hands every year.” In this matter, it should be emphasized that the petitioner seeks an employment-based visa. The evidence of record fails to show that the petitioner has been and will continue to support himself primarily through his skills as a Go player.

Counsel further states:

As we previously stated, in addition to only a few professional sports, participants in most sporting events in the world are amateur athletes such as most events in the Olympics. In the United States, except the National Football League, the National Basketball League, the Major League Baseball [sic], the National Hockey League and a couple of other sporting events, the majority of sporting events are participated by [sic] amateur players including the most celebrated athletes in most recent sporting events such as [REDACTED], the 6 gold medals swimming winner at 2004 Athens Olympics. Most athletes in this country have their regular employment but they consider participating in their respective sporting events their work even though they are not paid or employed by anyone. Therefore, it is very clear that the Center Director’s finding concerning the petitioner’s work in this present case is an overly restrictive and incorrect interpretation of the statute and applicable regulation.

Counsel’s argument is not persuasive. The fact that professional Go players clearly exist in the U.S. and abroad significantly undermines counsel’s argument. As shown by the evidence in this case, the game of Go provides ample compensation to those professionals who compete successfully at the national and international level. Counsel’s argument comparing Olympians to amateur game players is also seriously flawed. An Olympic victory indubitably represents the highest level of achievement in competitive athletics. The same cannot be said, however, of a victory in an amateur Go tournament. Beyond the amateur Go player level, there exists the professional level, which, according to the evidence of record, represents the highest level of achievement in Go playing. Furthermore, counsel’s observation that [REDACTED] a U.S. swimmer who won multiple gold medals at the 2004 Olympics in Athens, Greece, is an “amateur” athlete is incorrect. We note that [REDACTED] is “paid” significantly high compensation by Speedo and other U.S. corporations for product endorsements. Furthermore, unlike the petitioner, [REDACTED] is a “household name,” recognized immediately even among the general public as a top national competitor.

In this case, we concur with the director’s finding that the petitioner’s evidence fails to satisfy the statutory requirement at section 203(b)(1)(A)(ii) of the Act.

⁴ For example, according to Exhibit I of the appellate submission, [REDACTED] and [REDACTED] are the North American representatives to the 2nd Toyota/Denso North American Oza Tournament and will play for \$300,000 and a new Lexus.”

In conclusion, the petitioner has failed to demonstrate that he 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, or that he will “work in the area of extraordinary ability.”

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 the 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 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.