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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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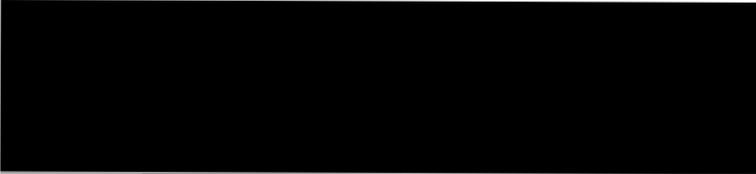
Office: VERMONT SERVICE CENTER

Date: OCT 25 2006

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:



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.

2 Robert P. Wiemann, Chief
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 in athletics. 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 states: “[The petitioner] has proved that his abilities as an athlete are extraordinary. He has proved it by submitting a great amount of documentation.”

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 May 28, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an arm wrestler.

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 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 submitted evidence showing that he won first place in the 100 kilogram weight class for (right and left arm) at the XXII World Armwrestling Federation World Armwrestling Championships in Springfield, Illinois in November 2002. The petitioner also submitted evidence showing that he placed third in the 90 kilogram weight class (right hand) at the XIX World Armsport Championships in Cairo, Egypt in November 1998. We find that the petitioner's evidence is adequate to satisfy this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted letters of support from the Georgian Arm Wrestling Federation, New York Arm Wrestling Association, and the World Armwrestling Federation. The record, however, includes no evidence of the membership bylaws or the official admission requirements for these organizations. There is no evidence showing that admission to membership in the preceding organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

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.

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 and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. 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.¹

The petitioner submitted articles appearing in *Sakartvelos Respublica* (December 25, 2002), *Aktsenti* (December 25, 2002), *Asaval-Dasavali* (December 29, 2002), and *Dariali* (December 2002). The author of these articles, however, was not identified as required by this criterion. The petitioner also submitted a March 20, 2005 article appearing in the *New York Daily News* entitled "They're armed and ready to grapple." This article devotes only two sentences to the petitioner and is primarily about the arm wrestling contest rather than the petitioner. The plain wording of this criterion, however, requires "published materials about the alien." If the petitioner is not the primary subject of the material, then it fails to demonstrate his individual acclaim. Further, there is no evidence showing that any of the five preceding articles had substantial national readership. Thus, 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.

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, serving as a judge for a national competition involving professional athletes is of far greater probative value than serving as a judge for a local competition involving amateur competitors or children.

In response to the director's request for evidence, the petitioner submitted two letters of support allegedly issued by [redacted] Vice President, Georgian Department of Sports, Tbilisi, on September 5, 2005. The first letter states: "[The petitioner] . . . is a professional referee and has great experience in this athletic field." The second letter states: "[The petitioner] is considered the best referee in his athletic field and has a great experience in it." These brief, vague letters provide no information about the specific competitions for which the petitioner served as a referee. The plain language of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of the work of others." In this case, there is no contemporaneous evidence showing that [the petitioner] has actually participated as a judge at officially sanctioned competitions at the national or international level. Further, there is no evidence identifying the names of the competitions in which the petitioner was involved and the dates that those events took place. Nor has the petitioner submitted evidence showing the specific competitive divisions he evaluated, the names of the participating athletes, and their level of expertise. More significantly, even if the petitioner had established that he refereed at an arm wrestling event, we do not find that in his participation as a referee, he *judged* the work of others. The duties of a referee are not to assess the work or expertise of the individuals involved in the competition. Rather, the responsibility of the referee is to ensure that rules and procedures are being followed and that the contest is safe and fair. The referee does not evaluate or judge the skills or qualifications of the participants. Without evidence

¹ 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.

showing that the petitioner's activities involved evaluating experienced professionals at the national or international level, we cannot conclude he meets this criterion.

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

The petitioner submitted letters of support from officials of the Georgian Arm Wrestling Federation, Department of Sports of Georgia, New York Arm Wrestling Association, and World Armwrestling Federation and from two arm wrestling competitors who are acquaintances of the petitioner. These individuals discuss the petitioner's arm wrestling victories, but they fail to identify original athletic-related contributions of major significance in the field directly attributable to the petitioner. The petitioner's competitive victories have previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion which the petitioner has already fulfilled. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

In order to satisfy this criterion, the petitioner must show that his athletic contribution has demonstrably influenced the greater field at the national or international level. For example, holding a national or world record in one's sport (in certain instances) can constitute a major contribution since the record is something to which other athletes aspire. In this case, however, the petitioner has failed to demonstrate an original athletic accomplishment that rises to the level of contribution of major national or international significance. Thus, 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 that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Beyond the decision of 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." Further, the regulation at 8 C.F.R. § 204.5(h)(5) requires "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 petitioner's intention to continue competing as an arm wrestler is not in dispute; the record shows that the petitioner has participated in various competitions here in the United States. **More relevant is the issue of whether employment as an arm wrestler will be the petitioner's primary occupation and source of income.** A letter of support from [REDACTED], who identifies himself as the petitioner's "personal manager and agent," states: "I have lined up a corporate sponsor [sic], [REDACTED]. That is eager to sponsor such an internationally renowned athlete [sic]." The record, however, includes no clear evidence of the details of this sponsorship (such as a contract). Because the petitioner seeks an employment-based immigrant classification based on his athletic skills, it is reasonable to require evidence that he has been and will continue to support himself principally as an athlete (rather than competing in his spare time while supporting himself through unrelated employment). In this case, the

evidence of record fails to show that the petitioner has been and will continue to support himself primarily through his skills as an arm wrestler.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.