



U.S. Citizenship  
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Services

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FILE: [Redacted]  
EAC 04 149 52108

Office: VERMONT SERVICE CENTER

Date: SEP 27 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:

[Redacted]

PHOTIC COPY

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.

*Mari Johnson*

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 argues that the petitioner “is a nationally and internationally recognized athlete.”

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

This petition, filed on April 20, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a competitive athlete “in the field of professional wrestling/Sambo.”<sup>1</sup>

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

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<sup>1</sup> The term “Sambo” is an acronym for the Russian phrase “Samozashchita Bez Oruzhiya” or in the English language, “Self-Defense Without Weapons.”

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 she was awarded gold, silver, and bronze medals at various national and international Sambo competitions during the 1990's. For example, the petitioner won gold medals at the Lithuanian Women's Sambo Championships in 1996, 1997, 1999 and bronze medals at the Women's Sambo World Championships in 1995, 1997, and 1998. We find the petitioner's evidence is adequate to demonstrate that she 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. An alien would not earn acclaim at the national or international 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.<sup>2</sup>

The petitioner submitted incomplete translations of articles appearing in *Klaipeda* and *Vakaris Express*. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The translations accompanying the preceding articles were not full English translations as required by the regulation. Without complete translations, it cannot be determined that the petitioner was the primary subject of the published material. Further, the petitioner did not submit evidence showing that *Klaipeda* and *Vakaris Express* had national or international circulation, including the section of the newspapers in which the petitioner's articles were featured.

In response to the director's request for evidence, the petitioner submitted two articles (dated August and September 2004) appearing in the *News Gleaner*, a weekly newspaper distributed in northeast Philadelphia. Aside from the petitioner not being the primary subject of these articles (her name is only briefly mentioned), there is no evidence showing that this publication qualifies as major media. Nevertheless, this evidence came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the

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<sup>2</sup> 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.

time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, this evidence will not be considered within this proceeding.

In view of the foregoing, the petitioner has not established that she 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.

We withdraw the director’s finding that the petitioner meets this criterion. The petitioner submitted a “Judge of National Level” identification card issued by the Lithuanian Republic Sambo Federation on March 30, 1998. The plain language of this criterion, however, requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” While this credential indicates that the petitioner is qualified to serve as a judge, there is no evidence showing that she has actually participated as a judge at officially sanctioned competitions at the national or international level. 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 she evaluated, the names of the participating athletes, and their level of expertise. Without evidence showing that the petitioner’s activities involved evaluating experienced competitive athletes at the national or international level, we cannot conclude she meets this criterion.

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

In response to the director’s request for evidence, the petitioner submitted letters of support from three martial arts experts [REDACTED] of United States Judo, Inc., [REDACTED] of the Liberty Bell Judo/Sambo Academy, and [REDACTED] of the American Sambo Federation). These individuals list the petitioner’s competitive awards and assert that her awards “constitute an athletic contribution of major significance.” The petitioner’s competitive victories, however, have previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). 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, 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 establish major significance, the petitioner must show that her athletic contribution has demonstrably influenced the greater field at the national or international level. The record, however, includes no evidence showing that the petitioner’s achievements have had a substantial national impact on competitors

currently active in the fields of judo, Sambo, professional wrestling, or the martial arts. 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 a specific athletic accomplishment that rises to the level of an original contribution of major national or international significance. Thus, the petitioner has not established that she meets this criterion.

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

The letter of support from [REDACTED] states: "In my view, widely publicized display of [the petitioner's] athletic achievements at international competition is comparable to 'display at artistic showcases.'" The evidence submitted by the petitioner, however, does not adequately support Louis Moyerman's claim that the petitioner's matches were "widely publicized." Aside from a single flyer promoting "International Fight Night" at the Atlantic Oceana Restaurant in Brighton Beach, Brooklyn, New York, on April 18, 2002, there is no evidence showing that the petitioner's matches in the United States have been "widely publicized."<sup>3</sup> Nevertheless, the petitioner's field is not in the arts. We find that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for competitive athletes such as the petitioner. The petitioner's participation and success in competitive events has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" his or her work in the sense of competing in front of an audience. Acclaim is generally not established by the mere act of competing in public, but rather by regularly attracting a substantial audience. The record includes no evidence showing that the petitioner's matches at various competitions received the top billing, drew record crowds, or resulted in greater audiences than other similar competitions that did not feature the petitioner.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

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." Parts 5 and 6 of the Form I-140 petition list the petitioner's occupation as "Professional Athlete" and her job title as "Professional Wrestler." The petitioner's intention to continue competing is not in dispute; the record shows that the petitioner has

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<sup>3</sup> There is no evidence showing the number of copies of the International Fight Night flyer circulated and their area of distribution, nor is there evidence establishing that the petitioner's match was billed as the main event that night. Further, there is no evidence showing that this event attracted a national audience rather than a local audience.

participated in various competitions since her entry into the United States in 2001. More relevant is the issue of whether employment as a “Professional Athlete” or “Professional Wrestler” will be the petitioner’s primary occupation and source of income. Because the petitioner seeks an employment-based immigrant classification based on her athletic skills, it is reasonable to require evidence that she has been and will be supporting herself principally as an athlete (rather than competing in her spare time while supporting herself through unrelated employment). In this case, the evidence of record fails to show that the petitioner has been and will continue to support herself primarily through her skills as a “Professional Athlete.”

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.” In his letter of support submitted in response to the director’s request for evidence [REDACTED] states that United States Judo, Inc. “will employ the services of [the petitioner] in our training camps on a nationwide level to coach United States young athletes.” We do not find, however, that coaching falls within the petitioner’s area of expertise. In this case, there is no evidence showing that the petitioner has established a successful history of coaching athletes who compete regularly at the national level. While a judo/wrestling competitor and a coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, [REDACTED] extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

*Id.* at 918. The court noted a consistent history in this area. Therefore, we find that the employment offer for a coaching position discussed in [REDACTED] letter is not clear evidence that the petitioner seeks to continue work in her area of expertise.

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.