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U.S. Citizenship
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FILE: [REDACTED]

OFFICE: NEBRASKA SERVICE CENTER Date: FEB 09 2009

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IN RE:

Petitioner:

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:

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).

Mai Plunson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Nebraska Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director issued a Notice of Intent to Revoke the approval of the petition. In a Notice of Revocation, the director ultimately revoked the approval of the Immigrant Petition for Alien Worker. The matter 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 criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner argues that he qualifies for classification as an alien of extraordinary ability.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Esteime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

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). 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, filed on May 8, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a 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, 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.¹

¹ 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 evidence showing, *inter alia*, that he placed first in international wrestling competitions such as the Canada Cup (2002) and the Stepan Sargsyan 10th International Tournament in Armenia (2005). As such, the petitioner has 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.

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. Further, 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 a March 2006 letter from [REDACTED] National Wrestling Federation of Georgia, stating that the petitioner is a member of the national freestyle wrestling team.

On appeal, the petitioner submits a November 5, 2007 letter from [REDACTED] General Secretary, National Wrestling Federation of Georgia, stating: “[The petitioner] is a member of the Olympic Team, which will participate in the freestyle wrestling in the Olympic Games of Beijing of 2008.” The petitioner's alleged membership on the Georgian Olympic team for the Beijing Olympics post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Subsequent developments in the petitioner's wrestling career cannot retroactively establish that he was eligible as of the petition's filing date. Accordingly, the AAO will not consider the petitioner's 2008 Olympic team membership in this proceeding.²

Membership on an Olympic team or a major national team such as a World Cup soccer team can serve to meet this criterion. 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 at the time of filing 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. In this instance, there is no evidence regarding the selection process and requirements for membership on the Georgian national freestyle wrestling team. As such, the petitioner has not established that he meets this criterion.

² Nevertheless, we note that the petitioner's name is not listed among the participating athletes on the “official website of the Beijing 2008 Olympic Games.” See <http://results.beijing2008.cn/WRM/ENG/BIO/Athlete/G.shtml>, accessed on January 30, 2009, copy incorporated into the record of proceeding.

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.

In general, 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 level from a local publication. 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.³

The petitioner submitted two articles printed in *Lelo* in June and August of 1996. The English language translations of these articles were incomplete. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS 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. Without full English language translations of the articles, it cannot be established that they were about the petitioner. The plain language of this regulatory criterion requires that the published material be "about the alien" relating to his work in the field. An article that only mentions the petitioner's name in passing does not meet this requirement. Further, the author of these articles was not provided as required by the plain language of this regulatory criterion. Finally, there is no evidence (such as circulation statistics) showing that *Lelo* qualifies as professional or major trade publication or some other form of major media.

In light of the above, 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. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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

³ 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, for instance, cannot serve to spread an individual's reputation outside of that county.

top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for top athletes is of far greater probative value than judging a regional youth competition.

In response to the director’s request for evidence, the petitioner submitted a March 6, 2007 letter from Omzar Shoshitashvili stating: “Besides a high wrestling manners [sic] [the petitioner] also was a fine referee. In 2004 he became a national category referee.” There is no evidence (such as official competition rules) showing that serving as a wrestling “referee” is tantamount to participation as a judge of others in his sport. Even if the petitioner were to establish that refereeing a wrestling match is tantamount to judging others in his field, there is no evidence demonstrating his participation as a referee. 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)). There is no evidence showing the names of the competitors evaluated by the petitioner, their level of wrestling expertise, the dates of competition, the specific competitive categories he judged, and the level of acclaim associated with judging those categories. Without evidence showing, for example, that the petitioner’s activities involved judging top athletes in national level competition or were otherwise consistent with sustained national or international acclaim, we cannot conclude that he meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

In response to the director’s notice of intent to revoke, the petitioner submitted World Championship freestyle wrestling medal count summaries from 2002 to 2006 showing that the Georgian national team has a distinguished reputation.

With regard to the petitioner’s role for the Georgian national team, the November 5, 2007 letter from [REDACTED] states: “[The petitioner] is the best sportsman on the National Team of [REDACTED] in freestyle wrestling and has made his country famous for many times. He is a multiple champion of Georgia, a world-prize winner and a multiple winner of the international tournaments.” The preceding statements are not sufficient to establish that the petitioner’s role as a team member was leading or critical. Mr. [REDACTED] letter and the other letters of recommendation submitted by the petitioner do not provide specific information differentiating his role from that of the other national team members. For example, the record lacks evidence comparing the petitioner’s results at wrestling competitions to those of the other members of the team (such as a comprehensive tally of tournament medals) during the years he competed. As stated previously, 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. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). Without objective evidence showing that the petitioner’s achievements differentiated him from those of his team members, we cannot conclude that he was responsible for

his team's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of national or international acclaim.

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

In this case, the petitioner has established that he meets only one of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). 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 sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Beyond the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the petitioner submitted several recommendation letters praising his talent as wrestler and summarizing his tournament victories. The petitioner's competitive victories have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). The recommendation letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions 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 from experts supporting the petition 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 experts' 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 achievements and recognition that one would expect of an athlete who has sustained national or international acclaim at the very top of the field.

While recommendation letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than opinion statements.

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.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452 n.1; *Matter of Ho*, 19 I&N Dec. at 589. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.