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

**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED]
LIN 07 006 50918

Office: NEBRASKA SERVICE CENTER

Date: **MAR 19 2009**

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.

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).


John Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 record did not establish that the petitioner achieved the sustained national or international acclaim required for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

This petition, filed on September 19, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a "shooting trainer." The record reflects that the petitioner had a successful career as a competitive shooter from 1993 through 2000. Regarding his plans for work in the United States, the petitioner initially stated that he intended to train law enforcement professionals in shooting. In his statement of intent the petitioner indicates that "[he] will continue [his] profession by representing United States in various national/international championships in the sport of shooting. [He] will also impart [his] knowledge/skills and train individuals in the sport so that they can represent the United States at the highest level." In counsel's response to the Request for Evidence ("RFE") dated August 29, 2007, he stated that the petitioner intends to work as president and chief instructor of [REDACTED], which is a company "engaged in providing professional tactical training & fire arms operations techniques to law enforcement officers, military agencies, law enforcement agencies of other countries and qualified civilians." That letter does not mention any intent of the petitioner to pursue competitive shooting.

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Although experience as an athlete is undoubtedly relevant to coaching or instructing the same sport, the two endeavors are not identical and an alien who seeks to enter the United States as a coach or instructor under the extraordinary ability immigrant classification cannot rely solely on prior acclaim as an athlete. While a competitive shooter and an instructor certainly share knowledge of the sport, the two rely on a different set of basic skills. Thus, competing as a shooter and instructing other shooters are not the same area of expertise.¹

In the present matter, the evidence is clear that the petitioner intends to work as a shooting instructor. Although a nexus exists between playing and coaching or instructing a given sport, to assume that every athlete's area of expertise includes instruction would be too speculative. To resolve this issue, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching or instruction at a national or international level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as an instructor. An instructor who has established a successful history of instructing athletes who compete regularly at the national level has a credible claim; an instructor of novices does not. Thus, we will examine whether the petitioner has demonstrated his extraordinary ability as an instructor or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully instructed.

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 at 8 C.F.R. § 204.5(h)(3) 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.²

¹ While not binding precedent, we note that the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

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, Lee's 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 instructor.

² Only those criteria claimed to be applicable by the petitioner will be discussed, because neither the petitioner nor counsel claim to meet any of the remaining criteria and the record contains no evidence relevant to those criteria.

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

As evidence under this criterion, counsel cites the petitioner's receipt of the [REDACTED] [REDACTED]-Venezuela; [REDACTED] n-Venezuela; Holder of [REDACTED] Range Shooting Record (1000 yards); International Defensive Pistol Association ("IDPA") Champion-[REDACTED]; and [REDACTED]. In his brief on appeal, counsel stated that "these awards are not associated with ordinary competitions, rather they are of national significance because the competitions attracted large number of participants from all over Venezuela and other Latin American countries." The record contains photographs of 6 medals and at least 16 trophies. Although the petitioner included information about what the medals were awarded for, he presented no evidence to show that the medals were for the contests and awards that he claimed. 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)). The petitioner provided pictures of some of the labels on the trophies, however, those labels did not reference the petitioner and were not accompanied by a certified translation as required by 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations, we cannot determine whether the evidence supports the beneficiary's eligibility under this criterion.

In addition to the trophies and medals, the petitioner submitted certificates of achievement indicating that he was named [REDACTED]

[REDACTED] g. The General Director of the Ministry of Education, Culture and Sport of Venezuela, [REDACTED] stated that through these awards the petitioner is recognized as a national champion. Although we acknowledge that these achievements evidence the petitioner's past success as a competitive shooter, the record does not demonstrate that he sustained this acclaim during the six years following his most recent shooting award in 2000 and preceding the filing of this petition. The record does not demonstrate that the petitioner has competed as a shooter since 2000 but has instead devoted his attention to acting as an instructor in this field. Although nationally or internationally recognized prizes or awards won by a instructor's students may be considered comparable evidence of the instructor's eligibility under this criterion pursuant to 8 C.F.R. § 204.5(h)(4), the petitioner presented no evidence of awards won by any of his students.

In his response to the Request for Evidence ("RFE"), counsel argues that the petitioner need not demonstrate that he won nationally or internationally recognized prizes or awards separate from those referred to above because "by nature, a one-time achievement is not, itself 'sustained' but a major prize such as Olympic medal, an academy award or a Nobel prize nevertheless places its recipients on a rarefied level and secures some degree of permanent recognition" Counsel cites to an AAO decision in a previously decided, unpublished case. Pursuant to 8 C.F.R. § 103.3(c), designated and published decisions of the AAO are binding precedent on all United States Citizenship and Immigration Service ("USCIS") employees in the administration of the Act. However, unpublished decisions have no such precedential value. In any case, none of the awards claimed by the petitioner establish that he has won a major, internationally recognized award. Although counsel refers to the petitioner's participation on the Venezuelan Olympic team, the sole evidence presented to support this

contention are letters written by [REDACTED] and [REDACTED], acquaintances of the petitioner. These letters does not identify the authors as officials of any organization with the ability to verify participation with the Venezuelan Olympic team nor do the letters specify in which Olympic Games the petitioner purportedly competed. Even if the petitioner presented documentary evidence of his participation on the Venezuelan Olympic team, he has not presented evidence that he won any awards in Olympic competition.

Although the record is sufficient to establish the petitioner's receipt of awards as a shooter, the last such award was received in 2000, six years prior to the filling of the petition. The petitioner has failed to establish any such nationally or internationally recognized awards as an instructor. The record fails to establish that as a shooter, the petitioner has sustained his acclaim after 2000 either as a competitor or subsequently as an instructor.

Accordingly, the petitioner failed to meet this criterion.

(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.

Counsel claims the petitioner meets this criterion by virtue of his membership in the National Tactical Officers Association, the Florida Swat Association, the United States Practical Shooting Association, the International Defensive Pistol Association, the American Sniper Association, the International Security Agency, the International Association for Counterterrorism & Security Professionals, the National Rifle Association of America, Emergency Management Accreditation Program ("EMAP"), and the Federal Emergency Management Agency ("FEMA"). The petitioner failed to submit the membership requirements for these associations. However, from their names, it appears that qualification for membership in these associations requires proficiency in shooting. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, 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. Instead, as required by 8 C.F.R. § 204.5(h)(3)(ii), membership in these associations must require a showing of outstanding achievement by the applicant as judged for eligibility by recognized national or international experts in the field. The petitioner presented no evidence to demonstrate the membership criteria for these associations much less that the requirements include outstanding achievement as judged by recognized national or international experts in the field.

Counsel states that these organizations are "elite" and "prestigious," but the record does not corroborate this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). Even if the petitioner had presented evidence of the associations' prestigious reputations, such evidence would not satisfy this criterion as the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Accordingly, the petitioner does not meet this criterion.

(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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, 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 excerpts from two articles where he claims to appear in photographs accompanying the articles. One article bears no indication of the title, date, or publication in which it appeared, as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The second article indicates that it appeared in "Tactical Response Magazine," however, it also does not include the required information such as the title, date, or author of the piece. The record is devoid of documentation such as the national or international circulation of either of the publications and the petitioner fails to otherwise establish that the publications are professional, major trade publications or other major media. In addition, neither of the articles are about the petitioner as neither contains any information about the petitioner including his name; instead, the articles are about various events and training held for snipers.

In response to the RFE, the petitioner submitted an article entitled "[REDACTED]" that appeared in the Caribazo Newspaper. Again, the petitioner fails to identify the article's date or author's name in contravention of this criterion's express requirements. In addition, the petitioner presented only a statement from the "National Journalist Chamber" stating that the newspaper is registered with the government and that it is "distributed nationwide." The registry of the newspaper with the government and a statement that it is distributed throughout Venezuela, without further probative evidence such as circulation numbers or some other specific information regarding its distribution does not establish that the newspaper is a professional, major trade publication or other form of major media. In any case, it appears that this article was published in 2007, i.e. after the filing of this petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). Therefore, the article will not be considered in this proceeding.

Accordingly, the petitioner does not meet this criterion.

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

On appeal, counsel argues that the petitioner made an original contribution of major significance to the field of shooting through his participation as the president and chief instructor of [REDACTED]. Counsel states that the petitioner's provision of successful training operations "in realistic high stress environments . . . in

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.

South/Central America, Europe, and allied nations” benefited the field of shooting. The petitioner failed to submit any probative documentation in support of his assertion that the petitioner’s activities benefited or impacted the shooting field. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506. While the petitioner may have fared well in shooting competitions and established a successful training company, the record does not establish, for instance, that he has developed original training standards or techniques or otherwise demonstrated his original contribution to his field. Further, even if the techniques or training given by the petitioner were found to be original, the record fails to demonstrate that his work is of major significance in the field. For example, there is no evidence to indicate that the petitioner’s techniques have been widely adopted throughout the sport or have significantly influenced competitive shooting.

For all of the above reasons, the petitioner failed to demonstrate eligibility under this criterion.

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

The petitioner initially claimed eligibility under this criterion by virtue of his participation in the same organizations that he named as qualifying associations under 8 C.F.R. § 204.5(h)(3)(ii); he specifically noted his participation in training and instruction with these organizations as evidence of his critical role with the organizations. As stated above, the petitioner demonstrated membership in the following organizations: the National Tactical Officers Association, the Florida Swat Association, the United States Practical Shooting Association, the International Defensive Pistol Association, the American Sniper Association, the International Security Agency, the International Association for Counterterrorism & Security Professionals, the Emergency Management Accreditation Program (“EMAP”), and FEMA. However, with the exception of [REDACTED], the record contains no background evidence regarding any of these organizations so as to establish that they enjoy a distinguished reputation. As it relates to [REDACTED], although the petitioner did provide information which demonstrates that he co-founded the company in 1999, as well as information on the training courses offered by the company and its basic history, the record does not contain any evidence regarding to the company’s reputation.

Even if the petitioner established that the above organizations enjoy a distinguished reputation, which he did not, the record also fails to establish that he played a leading or critical role in any of them. In addition, the petitioner failed to demonstrate that the role of an instructor is considered to be leading or critical within these organizations. Moreover, although the petitioner states that he served as an instructor for these organizations, he failed to provide documentary evidence to support this claim. As previously indicated, 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 165. The only direct evidence of petitioner’s participation as a training instructor came in the form of a certificate of appreciation from the Venezuelan Capital District Police Department for his participation as an instructor in its police training course. The petitioner also submitted a letter from [REDACTED] stating that the petitioner worked with the author “giving (MSI) Military Shooting Instruction,” but that letter did not contain any specifics as to where the instruction was given, to whom, or in what time frame. An undated newspaper article stated that the petitioner, as part of the [REDACTED] provided training for police officers in Margarita. However, the information about [REDACTED] indicates that the company employs twenty shooting instructors and the petitioner presented no

evidence indicating that his role differs from any of the other instructors so as to make it leading or critical; the petitioner presented evidence that he is the president of Alpha Tactical, but provided no information about what that position entails or what role he takes with the company on account of holding the presidency.

The petitioner also included pictures which he identified as pictures of himself leading training sessions with a Brazilian SWAT team, an Argentinean group, a group in Caracas, Venezuela, the Venezuelan military intelligence agency, and the Orange County, Florida Sheriff's Office; and participating in a session in Arizona, participating in a "Rappel Master Course." However, the petitioner presented no objective evidence that he participated in these courses as an instructor instead of a student or that any instructor's participation would constitute a leading or critical role for the organizations.

The petitioner presented evidence that he was sponsored by Petr6leos de Venezuela ("PDV") in 1999 and that the company would provide "all the required and needed support for the assistance and development of the diverse competitions that will take place, nationally and internationally." The petitioner also presented evidence that he was sponsored by Banesco Universal Bank. In addition, the petitioner submitted evidence that he served as a police officer and was the head of the special forces operation and head instructor of the SWAT team beginning in 1995. A letter from Luis Felipe Mota Carpio indicates that he and the petitioner both served as leaders for the Metropolitan Police Shooting team and the Navy Shooting Sniper Team (High Power Rifle Division). The petitioner presented no evidence either about the reputations of these organizations or about how his participation in them constituted a leading or critical role.

Accordingly, the petitioner does not meet this criterion.

Finally, on appeal, counsel submits additional evidence of "testimonials" and requests that such evidence be considered as comparable evidence. Comparable evidence will only be considered when the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation." The petitioner has not explained or documented how the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to his occupation as a shooting competitor or shooting instructor. To the contrary, the record indicates that at least five of the criteria at 8 C.F.R. § 204.5(h)(3) are applicable to the petitioner's profession. Further, we have considered the evidence regarding the petitioner's shooting instruction and the testimonials of "prominent sports personalities who have attained international acclaim in the sport of shooting" in our above discussions of the fifth and eighth criteria.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his field. The evidence in this case indicates that the petitioner achieved success as a competitive shooter between 1994 and 2000, however, the record does not establish that the petitioner sustained his past acclaim as a shooter in the six years following his last documented athletic award and preceding the filing of this petition. The record also fails to establish that, at the time of filing, the petitioner sustained his former acclaim as a shooter through his subsequent work as a shooting instructor. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his petition may not be approved.

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*, 299 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 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. This decision is rendered without prejudice to the filing of a new petition with the requisite supporting documents under section 203(b) of the Act, 8 U.S.C. § 1153(b).

ORDER: The appeal is dismissed.