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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

B2

FILE: [REDACTED]  
SRC 07 085 51992

Office: TEXAS SERVICE CENTER Date: MAR 20

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.

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).

*J. Grissom*  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition 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 that she sought to enter the United States for the purpose of continuing in her area of expertise. The director further determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal or Motion, on which he indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days of filing the appeal. As of the date of this decision, however, more than six months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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

This petition, filed on January 17, 2007, seeks to classify the petitioner as an alien with extraordinary ability in athletics. The statute and regulations require that the petitioner seek to continue work in her 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). 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 initial documentation indicated that she is a bodybuilder. In a request for evidence (RFE) dated April 28, 2007, the director instructed the petitioner to "submit documentary evidence of your plans for continuation of work in this specialty or in another athletic specialty in the United States." In his July 17, 2007 letter accompanying the petitioner's response, counsel stated that the petitioner "has been and fully intends to pursue training and competing on a national level as well as participate in international level competitions as soon as such becomes available." However, the record contains no statement from the petitioner or other documentation to support counsel's statement. 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). The record contains a copy of a page from the website of the National Amateur Bodybuilders Association (NABBA) USA, accessed on July 16, 2007, which indicates that athletes competing in "national competitions" in the United States must be U.S. citizens. The petitioner, however, submitted no documentation to indicate that she has been or will be competing in any competitions on less than a national level until she actually receives U.S. citizenship.

The petitioner also submitted a July 16, 2007 letter from [REDACTED], signed by the general manager of operations, [REDACTED], who stated that the spa intended to employ the petitioner "in a variety of health and fitness roles." Mr. [REDACTED] further stated that the organization intended to "offer her expertise in the area of performance weight training to guests and members." We note that a trainer is similar to a coach or instructor. However, while the petitioner appears to have achieved a moderate level of success as a bodybuilder, she cannot rely on her prior success as a competitive bodybuilder to meet this classification if she seeks to enter the U.S. to work as a fitness trainer or instructor. While a competitive bodybuilder and a coach or trainer certainly share knowledge of weight training, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching or training are not the same area of expertise.<sup>1</sup> Given the equivocal evidence about the petitioner's intended employment in the

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

U.S., we cannot conclude that she seeks to enter the U.S. to continue to work in her area of expertise.

Similarly, as it relates to the “sustained acclaim” that a petitioner is required to demonstrate pursuant to section 203(b)(1)(A)(i) of the Act, while a nexus exists between competing and coaching or instructing in a given sport, to assume that every athlete’s area of expertise includes instruction or training 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 coaching is within the petitioner’s area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach or instructor. A coach 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 her extraordinary ability as a competitive athlete and as a trainer or instructor. If the petitioner has demonstrated extraordinary ability as an athlete, we will then consider the level at which she has successfully trained.

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 of the criteria outlined in 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 that, she claims, meets the following criteria.<sup>2</sup>

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

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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.

<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

With the petition, the petitioner submitted the following:

1. A copy of a "First Prize Diploma," awarded to the petitioner in the April 11-12, 1992 Ukraine Bodybuilding Cup in the women's 52 kg weight category.
2. A photograph of a "medal prize" in an open bodybuilding tournament. The photograph does not show a date or the name of the winner.
3. A copy of a November 1, 1992 "[REDACTED]" awarded to the petitioner in "The First National Championship of Ukraine in Bodybuilding" in the women's 57kg weight category.
4. A photograph of a 1993 medal from the NABBA "Universe Contests." The photograph does not show the name of the winner.
5. A photograph of a "medal prize" from the State Sport Committee of Ukrainian USSR. The photograph does not contain a date or the name of the winner.
6. A copy of an August 18, 1996 certificate indicating that the petitioner won the [REDACTED] [REDACTED] in the Grand Buenos Aires Tournament.

As it relates to the awards listed at 1,3, and 6, the only awards that actually contain the petitioner's name, the petitioner submitted no documentation to demonstrate that an award conferred in any of these contests is a nationally or internationally recognized prize or award.

In response to the RFE, the petitioner submitted a copy of a July 17, 2007 e-mail from [REDACTED] [REDACTED] from [REDACTED], in which she forwarded an e-mail from [REDACTED] [REDACTED]. In his e-mail, [REDACTED] certified that the petitioner competed in the 1993 Universe Championships. The petitioner provided pictures of herself at the competition and a DVD of the competition. The petitioner also submitted a December 12, 2006 "verification letter" from [REDACTED] in the Ukraine. The letter certified that:

[The petitioner] was a member of the [REDACTED] from 1991 until 1993. During this period of time she competed with Europe and world champions at Ukraine Bodybuilding Cup where she became a Winner and took the [REDACTED] Championship of Ukraine in Bodybuilding; became a member of the National Bodybuilding Team and won the [REDACTED] the Union of Independent States (UIS) International Bodybuilding Championship in 1992 and 1993 as well as become a finalist of Miss Universe Contest in London in 1993.

The director determined that participants in NABBA events retain their status as “amateurs,” and that participation in such events “cannot carry the evidentiary weight of top-level awards and titles.” We concur with this determination regarding amateurs. The director, however, ultimately found that the petitioner meets this criterion based on her [REDACTED] in the 1992 Ukraine Body Building Cup.

While we acknowledge the petitioner’s receipt of this award, we cannot concur with the director that the petitioner meets this criterion based on an award that she won in 1992. As previously cited, section 203(b)(1)(A)(i) of the Act requires an alien seeking entry into the U.S. as an alien of extraordinary ability to demonstrate sustained national or international acclaim. The petition was filed on January 17, 2007. The petitioner submitted no documentation of any awards or prizes that she received subsequent to 1996. As discussed above, a petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to a given criterion. The evidence itself must be indicative of or consistent with the petitioner’s sustained national or international acclaim in her area of expertise. The petitioner has not established that her awards or prizes, received 10 years before she filed her petition, are demonstrable of sustained acclaim in the field of bodybuilding.

On appeal, counsel asserts that the director erred in determining that the petitioner’s awards were not “major” or “internationally recognized.” Counsel states:

Petitioner’s awards and achievements in the field of women’s body building are major and internationally recognized. CIS reasoned that petitioner had not won an Olympic Gold medal and therefore had not achieved major and internationally recognized awards in her field. CIS erroneously failed to recognize that women’s body building is not an Olympic Sport and Petitioner could not have obtained an Olympic medal. However, petitioner was a finalist in the 1993 N.A.B.B.A. Universe Championship, which, as the record shows, is the equivalent of the world body building championships. CIS misinterpreted and erroneously minimized the significance and prestige of the N.A.B.B.A Universe Championship because it allows amateurs to compete (as does the Olympics).

We note first that neither counsel nor the petitioner claimed that her awards constituted major, internationally recognized awards that would make her eligible for this criterion based on a one-time achievement. Further, the record does not support counsel’s assertion. 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. Second, even if the NABBA Universe Championship was the equivalent to an Olympic prize, the record only shows that the petitioner was a finalist in the competition. The record does not indicate the position that she placed and contains no documentation to support the assertion that placing as a finalist is the equivalent of winning any award. Third, as discussed above, the petitioner must establish that she has achieved sustained acclaim. The petitioner has submitted no documentation to establish that she has won any awards

or prizes since 1996. Finally, the petitioner submitted no documentation to establish that she has won any awards or prizes as a trainer or instructor.

The evidence does not establish that the petitioner meets this criterion. We withdraw the director's determination to the contrary.

*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 to meet this criterion, the published materials must be about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a partial copy of what counsel claims is an insert from the February 1993 "Soviet Sport Newspaper – Vestnik." According to the translation, the petitioner's picture appears on page 11 under the caption "Finalists of the Union of Independent States International Bodybuilding Championship in Moscow, Russia." Documentation submitted also included pictures of the petitioner in *Torneo* magazine, which, according to the translation, appeared in the 1996 Buenos Aires edition of the publication; a picture of the petitioner and other women, which according to the translation, appeared in the 1997 edition of *Torneo* magazine; and a page from *Torneo* magazine listing the results of the Buenos Aires'97 Bodybuilding Championship.

The documentation submitted does not constitute materials about the petitioner or her work. Four of the documents only contain captioned photographs and the other document is a list of winners of a competition. In addition, the documentation does not include the title, date, and author of the material as required by the regulation. While one of the photographs and the results of the bodybuilding championship indicated that they appeared in *Torneo*, the others do not and none of the documentation includes the dates indicated by the petitioner. Further, the petitioner only submitted partial translations of the documents. The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "be accompanied by a full English translation which 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."

In response to the RFE, the petitioner submitted a copy of a page from the *Wikipedia* website, which counsel states is proof of the article that appeared in *Vestnik* and also evidence of its circulation. With regard to the information posted on *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>3</sup> As such, we will not give significant weight to claims for which *Wikipedia* is the only cited source.

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<sup>3</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

The petitioner also submitted copies of pages from *Fitness Culture* magazine. The document contains a smaller copy of the photograph of the petitioner after she won the 1996 Argentinean Championship. The document also includes an article accompanied by several photographs including the petitioner's. The article does not mention the petitioner, although her name does appear under her photograph. The petitioner also submitted a more complete translation to accompany the results of the 1997 Buenos Aires Bodybuilding Championship, which according to the translation, appeared in the *Fitness Culture* magazine. However, none of these photographs are considered material about the petitioner or her work. Further, even if considered to be about the petitioner, the petitioner failed to provide any evidence to establish that the publications are considered to be professional or major trade publications. Finally, the petitioner submitted no documentation of any published materials about her work as a bodybuilding trainer or fitness consultant. Accordingly, the evidence does not establish that the petitioner meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner did not initially claim to meet this criterion. In his June 17, 2007 letter accompanying the petitioner's response to the RFE, counsel asserted:

National NABBAs have strict rules regarding the commercial competitions which involve money prizes. Existence of these rules is caused by the Amateur Status requirement of NABBA International. Only athletes who have never entered and accepted prize money in an advertised professional event are considered amateurs and have a right to compete in National Competitions and NABBA Universe. Therefore, [the petitioner's] high level of remuneration in relation to others in her athletic specialty consists of various trophies, medals and diplomas.

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*Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See <http://en.wikipedia.org/wiki/Wikipedia:Disclaimers>, accessed on March 17, 2009, and incorporated into the record.

Counsel's assertion is without merit. Awards and prizes won as a result of an athletic competition are not remuneration. The petitioner's medals and diplomas have been considered under other categories discussed above. Furthermore, the petitioner submitted no documentary evidence that her "remuneration" was high relative to others in bodybuilding, and submitted no documentation that she commands a high salary or significantly high remuneration relative to other bodybuilding trainers. The evidence does not establish that the petitioner meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of her field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished herself as a bodybuilder, trainer or fitness consultant 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. 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.