



U.S. Citizenship
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FILE:

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LIN 08 242 52088

Office: NEBRASKA SERVICE CENTER

Date: NOV 24 2009

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:

[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 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).

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on December 22, 2008, 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 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 regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 September 3, 2008, 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 under 8 C.F.R. § 204.5(h)(3).¹

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

Regarding this criterion, the director found that the awards submitted by the petitioner did not constitute lesser nationally or internationally recognized prizes or awards for excellence, including many awards won at the junior level. In addition, the director found that the documentary evidence submitted by the petitioner failed to establish the actual stature and prestige of the competitions, so as to establish the significance of the resulting awards.

We agree with the director that awards at the junior level do not constitute lesser nationally or internationally recognized prizes or awards. Awards won by the petitioner in competition that were limited by his junior status do not indicate that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than mostly limited to a few individuals in age-based or other similarly limited competition. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.²

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

² While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

However, as argued by counsel, the petitioner submitted evidence of awards that were achieved at the non-junior or senior level. The petitioner submitted documentary evidence establishing that he competed and medaled in the following international competitions:

1. Bronze medal at the 21st Grand Prix International Wrestling Tournament in Cairo, Egypt in March, 2001;
2. Silver medal at the Poland Open International Wrestling Tournament on November 13, 2003;
3. Gold medal at the 2004 Dave Schultz Memorial International Senior Greco Roman Wrestling Championship in Colorado Springs, Colorado;
4. Bronze medal at the 18th Senior Asian Wrestling Championships from May 24-25, 2005, in Wuhan, China; and
5. Bronze medal at the Commonwealth Wrestling Championships from June 30 to July 2, 2005, in South Africa.

Based on the supporting documentary evidence, we disagree with the finding of the director regarding the lack of stature and prestige of the above-mentioned tournaments. The petitioner established that the tournaments are sanctioned by the International Federation of Associated Wrestling Styles, which is the governing body of international amateur wrestling. As evidenced above, the petitioner has established that he received lesser internationally recognized awards for excellence in the field of endeavor. Therefore, we withdraw the director's finding regarding this criterion.

Accordingly, 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.

On appeal, counsel argues that the petitioner is eligible for this criterion based on his selection to the Indian Olympic team and Indian National team. The petitioner claims to have "participated and competed in the 2004 Olympics in Athens on behalf of India." In support of the petitioner's Olympic claim, he submitted a diploma from the International Federation of Associated Wrestling Styles for his "contribution to the success of second qualifying tournament for the 2004 Athens Olympic Games Greco-Roman Wrestling," in Tashkent, Uzbekistan from March 13-14, 2004. The petitioner also submitted a website page indicating that he placed fourth at the qualifying tournament as well as four photographs of his participation at the qualifying tournament. Finally, the petitioner submitted an article from *India Express* from Athens, Greece, which discusses the petitioner's

The petitioner has established that he meets this criterion.

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.

At the time of original filing, the petitioner, who performed the translations, submitted only summary English translations of newspaper articles from the Hindi language. The director requested that the petitioner submit full English translations pursuant to 8 C.F.R. § 103.2(b)(3), which requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language 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, counsel stated that summary translations were originally submitted because of the large expenses associated with the cost of translations (even though the petitioner performed the translations). Counsel further stated that the full English translations were submitted in response to the director’s request. It is noted that the petitioner certified that he translated all of the articles the second time.

We are not convinced that the articles were fully translated into the English language as required under 8 C.F.R. § 103.2(b)(3). For example, the petitioner submitted an article from *The Daily*, titled “Mukeshi’s Golden Performances,” dated August 14, 2000. The translation reflects two paragraphs. However, the original article reflects six paragraphs. In addition, the petitioner submitted an article from the *Jansatta Newspaper*, titled “Mukesh’s Big Challenge in World Championships (New York),” dated August 27, 2001. The translation reflects six paragraphs. However, the original article reflects twelve paragraphs. Furthermore, the petitioner submitted an article from *NavBharat Times*, titled [REDACTED] dated December 13, 2001. The translation reflects four paragraphs. However the original article reflects five paragraphs, which are considerably longer than the translation.

Because the petitioner failed to submit full English language translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

For the reasons stated above, we will only consider the evidence originally written in the English language. The petitioner submitted the following:

1. An Internet article from *PunjabNewsline*, titled “18 Wrestlers Selected for World Championship,” dated September 10, 2006;
2. An article from *CityExpress*, titled “Khatri is Class Apart,” dated December 20, 2002;
3. An Internet article from *The Hindu*, titled “Wrestling: Mukesh Khatri Claims Gold in Style,” dated December 21, 2002;

4. An article from *HT Ranchi Live*, titled “Medal Hunt Begins Today,” dated January 9, 2003;
5. Two articles from *Sportslines*, titled “A Reckoning Force of Indian Wrestling” and “Mukesh Spoils Jharkhand’s Party,” dated January 11 [unknown year];
6. An Internet article from *The Hindu*, titled “Asian Championship: Cheema is India’s Best Bet,” dated June 5, 2003;
7. An Internet article from *Sportstar*, titled “There’s a Steady Improvement,” dated August 2-8, 2003;
8. An Internet article from *The Times of India*, titled “Grapplers Ready for Olympic Glory,” dated February 27, 2004;
9. An article from an unknown source, titled “A Medal is 4 Rounds Away,” dated August 11 [unknown year];
10. An article from *ExpressIndia*, titled “Olympics: Khatri to Kickstart Indian Campaign in Wrestling,” dated August 19, 2008;
11. An Internet article from *Wrestling Information*, titled “Dave Schultz Memorial International Brings Top Wrestling Nations to the U.S. Olympic Training Center in Colorado Springs, Colo., Feb 3-4,” dated January 25, 2006; and
12. An Internet article from *Guardian*, titled “Track and Failed: The Making of a Sleeping Olympic Giant,” dated July 25, 2008.

As it relates to the petitioner’s claim of published material about him, counsel argues:

To begin, in both the Request for Evidence and Director’s Decision, the Service took the Petitioner to task for failing to “provide information regarding the publications.” Clearly, the Service imposed a burden on the Petitioner that is not found in the regulations with regard to published material about the Petitioner. While the Petitioner is required to provide the title, date, and author of the material, and any necessary translation, there is not requirement that a Petitioner provided information regarding each publication, to include the “purpose” of the publication.

We find the director’s request to be reasonable and within his discretion. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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 (emphasis added).” The articles submitted by the petitioner were from sources in India. The director’s request is derived from his non-familiarity with news outlets in India. It is incumbent on the petitioner to establish that the articles were published in professional or major trade publications or other major media. We find no error on the part of the director for requesting evidence such as the “distribution” or “circulation” or “purpose” of the publications to establish that they are professional or major media. As it relates to the “purpose,” the publication may simply be an advertising circular or an informational brochure rather than a publication such as a newspaper or magazine, in which case would not be sufficient to meet this criterion.

Regarding Items 5 and 9, the articles do not comply with 8 C.F.R. § 204.5(h)(3)(iii) as they do not contain the years of publications. For Item 9, while counsel claims that the article appeared in *Indian Express* on August 11, 2004, there is no evidence of what newspaper or magazine the article

actually appeared. Regardless, the petitioner has failed to establish that these publications are major media.

Regarding Items 1, 3, 4, 6, 7, 8, 11, and 12, the articles merely mention the petitioner participating at events. Two of the articles mention the petitioner one time (Items 8 and 11), while five of the articles mention the petitioner along with numerous other athletes or wrestlers (Items 1, 3, 6, 7, and 11). The articles simply either provide the names of wrestlers at upcoming events or provide the results at events.

In two of the articles (Items 4 and 12), the petitioner is simply shown in photographs in connection with the articles. These articles, therefore, are not considered to be about the petitioner.

Regarding Items 2 and 10, we concur with counsel that the articles are dedicated solely to the petitioner. However, both articles appeared in derivatives of *Indian Express* (*CityExpress* and *ExpressIndia*). The petitioner submitted a website page from the Embassy of India indicating that there are four major publishing groups in India; *Indian Express* is one of those groups with a daily circulation of 519,000. However, the articles submitted by the petitioner appeared in a derivative newspaper and website of *Indian Express*. We note that the website does not list *CityExpress* or *ExpressIndia* as a major publishing group in India. Nevertheless, the petitioner failed to submit documentary evidence that a daily circulation of 519,000 for *Indian Express* equates to major media when compared to the other statistics submitted into the record for other publications. The record is unclear as to the stature and circulation of these derivatives in comparison to other major media.

Regardless, we are not persuaded that two articles about the petitioner, who has been an active competitor for more than a decade, are sufficient to establish the level of acclaim required for this highly restrictive classification.

Accordingly, the petitioner has failed to establish 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 petitioner claims eligibility for this criterion based on his invitation in September 2007 at the Olympic Training Center in Colorado Springs, Colorado to train and compete against the top U.S. wrestlers. The director concluded that the petitioner's training and competing did not constitute the judging of the work of others. On appeal, counsel argues that the petitioner was never invited to be a member of a team but for the purpose of training and competing.

Nonetheless, the *training* of wrestlers is not the judging of the work of others in the same or an allied field of specification as required at 8 C.F.R. § 204.5(h)(3)(iv). In this case, training entails physically preparing by instruction and practice while judging entails reviewing the work of others.

Furthermore, the petitioner claims eligibility for this criterion based on his appointment as a coach of the Charan Singh University, Meerut Team from November 18, 2006, to December 14, 2006. Similar

to the reasoning above, the coaching of wrestlers is not the judging of the work of others in the same or an allied field of specialization. The mere nature of evaluating student athletes as part of a daily and routine occupational responsibility does not rise to the level of acclaim required for this highly restrictive classification. *See Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009)(Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion).

In addition, the petitioner submitted a certificate from Noida College of Physical Education indicating that the petitioner officiated in the Ch. Charan Singh University Inter-Collegiate Wrestling Tournament from November 16-17, 2006. Without further information, we do not find this certificate sufficiently establishes that the petitioner participated as an official. The certificate does not establish that the petitioner actually assessed the work or expertise of the individuals involved in the competition. If the petitioner acted as a referee and simply enforced the rules of the match and sportsmanlike competition, then his participation as an official cannot be said to have involved evaluating or judging the skills or qualifications of the participants. Without further evidence such as that he awarded points or chose the ultimate winner, evidence regarding officiating at the competition is insufficient to meet this criterion.

Moreover, we note that the majority of the petitioner's claims for this criterion relate to his work with college level athletes. 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 top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). For example, evaluating the work of accomplished wrestlers as a member on a national panel of experts is of far greater probative value than evaluating the work of collegiate or junior wrestlers. *Id.*

Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner claims eligibility for this criterion based on his fifth place world ranking in the 55 kilogram in Greco Roman style in 2001. Based on the previously mentioned letter from [REDACTED] the petitioner was the first Indian ever to be ranked as high as fifth in the world. Counsel further argues that "[t]he Petitioner's world-ranking and medal wins for wrestling were recognized in India (the second most populous country in the world) not only with national pride but as a first Indian wrestler, which clearly constitutes an original accomplishment."

The petitioner also submitted recommendation letters from [REDACTED] for USA Wrestling; [REDACTED]; [REDACTED] at [REDACTED]

U.S. Olympic Education Center; Principal at Noida College of Physical Education; [REDACTED]
[REDACTED] at World Class Athlete Program; and [REDACTED]

We note that the recommendation letters highly praise the athletic abilities of the petitioner. However, talent in one's field is not necessarily indicative of athletic contributions of major significance. We further note that while the letters generally claim "significant contributions," they offer nothing specific regarding his actual contributions. In addition, the letter from [REDACTED] indicates that the petitioner "has been valuable to [REDACTED] in my career as an Olympian for the USA." However, documentation submitted with [REDACTED] letter indicates that he retired in 2004. The record is unclear as to the contribution the petitioner made to [REDACTED] career when was already retired before the petitioner entered the United States.

The record lacks evidence showing that the petitioner has made original athletic contributions that have significantly influenced or impacted his field. The letters of recommendation do not provide any evidence of the petitioner's original athletic contribution of major significance in his field.

The letters of recommendation do not specify exactly what his original contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the admiration of those with whom he has worked and trained, there is no evidence demonstrating that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other wrestlers nationally or internationally, nor does it show, for instance, that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These 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 original contributions of major significance that one would expect of a wrestler who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

Finally, while counsel also cites to coverage of the petitioner in various newspapers and awards won, these factors have already been considered under 8 C.F.R. §§ 204.5(h)(3)(i) and (iii). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate

criteria exist for prizes and published material about the alien, USCIS clearly does not view these criteria 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.

Accordingly, the petitioner has not established 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.

Counsel argues on appeal that the petitioner meets this criterion based on his participation in training with USA Wrestling and the U.S. Army World Class Athlete Program. While the letters from [REDACTED] and [REDACTED] of the U.S. Army World Class Athlete Program both indicate that the petitioner “made a significant contribution” to their programs, the letters do not establish that the petitioner’s roles or positions were leading or critical to these organizations as a whole. For example, the record does not include detailed position responsibilities discussing the nature of the petitioner’s duties and significant accomplishments and the importance of his role to the organizations. The letters were general in describing the petitioner’s roles. There is no evidence demonstrating how the petitioner’s roles differentiated him from the other competitors and trainers. In this case, the documentation submitted by the petitioner does not establish that he has performed in a leading or critical role to a degree consistent with sustained national or international acclaim.

Accordingly, the petitioner has not established that he meets this criterion.

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)(i) 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.