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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: SEP 02 2009  
LIN 08 063 50433

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)

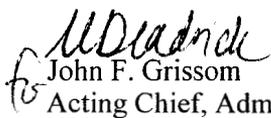
ON BEHALF OF PETITIONER:

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).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska 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 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 the statutory requirements and 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 to the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and the 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, 60898-9 (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 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 he has sustained national or international acclaim at the very top level.

This petition, filed on December 19, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a professional boxer. 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 is arguably relevant to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

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

In an October 13, 2007 statement, the petitioner stated that he was champion of the Republic of Armenia and winner of the International Tournament and was recognized as one of the top ten athletes of Shirak Marz. He further stated that in the year 2000, he won third prize at the International Tournament and in 2004, was again champion of the Republic of Armenia and recognized as the best senior athlete of Shirak Marz. The petitioner also stated that he placed 3<sup>rd</sup> in the International Tournament in 2005.

With the petition, the petitioner submitted copies of the following:

1. An honorary diploma indicating that he placed 1<sup>st</sup> in the 52 kg weight class at the Youth Boxing Championship of the Republic of Armenia held in Vanadzor on July 26, 1999.
2. A diploma indicating that he placed 1<sup>st</sup> in the 57 kg weight class at the XXVI International Junior Boxing Tournament held in the City of Bydgoszcz in 1999.

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

3. A diploma indicating that he placed 3<sup>rd</sup> in the 60 kg weight class at the International Boxing Tournament “Vladimir Monamakh Cup” held in Vladimir, Russia from December 9 to December 12, 2000.
4. A diploma indicating that he placed 1<sup>st</sup> in the 63.5 kg weight class at the Boxing Qualifying Competition of the Republic of Armenia held in the City of Yerevan from November 13 to November 16, 2002.
5. An honorary diploma indicating that he placed 3<sup>rd</sup> in the 64 kg weight class at the International Boxing Tournament of Class “A” held in the City of Sochi from December 3 to December 7, 2003.
6. A diploma indicating that he won 1<sup>st</sup> place in the 64 kg weight class at the 4<sup>th</sup> Russian Class ‘A’ Boxing Tournament held in the City of Nazran (Republic of Ingushetia) from September 16 to September 21, 2004.
7. A diploma indicating that he placed 1<sup>st</sup> in the 64 kg weight class at the 2004 Boxing Championship of the Republic of Armenia held in the City of Yerevan from October 15 to October 20, 2004.
8. A February 2005 diploma indicating that he placed 3<sup>rd</sup> in the Sport Branch of the 54 kg boxing at the FAJR International Cultural and Sports Tournament.
9. A diploma indicating that he participated in the 16<sup>th</sup> European Junior Boxing Championships “Rijeka ‘99” held from September 10 to September 20, 1999. The certificate indicated that it was issued by the European Amateur Boxing Association.
10. A December 29, 1999 and a December 28, 2000 certificate from the Shirak Region Administration, signed by the governor, congratulating the petitioner for “entering the Top Ten of Shirak Marz Junior Athletes” 1999 and 2000 championship seasons.
11. A December 29, 2004 and a December 26, 2005 certificate from the Shirak Region Administration, signed by the governor, congratulating the petitioner for “achieving excellent results” during the 2004 and 2005 championship seasons.
12. A certificate of appreciation issued to the petitioner by the Organizing Committee for “China King for Good” XIII World Senior Boxing Championships held from November 11 to 21, 2005.

The petitioner submitted no documentation with the petition to establish that any of these awards or prizes are nationally or internationally recognized as awards of excellence in his field. Additionally, he submitted no documentation to establish that the diploma and certificates enumerated in numbers 9 through 12 above constitute an award or prize. Certificates of achievement that document the petitioner’s participation are not awards.

Additionally, several of the certificates and diplomas indicate that the petitioner competed in the “junior” or “youth” category. With regard to awards won by the petitioner in these competitions, we cannot conclude that such awards 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). 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.<sup>2</sup> Likewise, it does not follow that the petitioner who had success in a competition restricted by age rather than his field at large should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

In response to the director’s April 21, 2008 request for evidence (RFE), the petitioner submitted a copy of a May 19, 2008 certificate from the Boxing Federation of Armenia certifying that the petitioner was a member of the National Boxing Team of Armenia and listing his achievements in 1999, 2002, 2004 and 2005. The certificate indicates the number of bouts that the petitioner fought in winning his various matches. However, we note that the awards identified by the Boxing Federation do not correspond with the diplomas and certificates provided by the petitioner. For example, the certificate indicates that in 1999, the petitioner won the 57 kg weight class at the Youth Boxing Championship of the Republic of Armenia and the International Tournament in Poland. However, documentation submitted by the petitioner indicates that he won in the 52 kg weight class at the Youth Boxing Championship of Armenia held in Vanadzor and the 57 kg weight class at the XXVI International Junior Boxing Tournament held in the City of Bydgoszcz. Additionally, the certificate from the Boxing Federation indicates that in 2005, the petitioner won in the 64 kg weight class at the Senior Boxing Championship of Armenia in Yerevan. However, the petitioner submitted no documentation corroborating his victory at this event. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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<sup>2</sup> 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.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

Furthermore, despite the director's specific request, the petitioner submitted no documentation in response to the RFE to establish that awards or prizes that he won at these competitions are nationally or internationally recognized as awards or prizes of excellence in his field of endeavor.

On appeal, the petitioner stresses the international nature of his competitions and states that he was the "Champion of the Republic of Armenia" in 1999, 2002 and 2004. However, while a competition or award may be international in nature, the international nature of the event or award does not automatically elevate it to national or international prominence. The petitioner submitted no documentation such as media coverage or similar evidence to indicate that winning any of the competitions were nationally or internationally recognized as awards of excellence in his field.

The petitioner has failed to establish 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.*

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. Membership requirements based on employment or activity in a given field, minimum education or work experience, 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The certificate from the Boxing Federation of Armenia indicates that the petitioner was a member of the National Boxing Team of Armenia from 1999 to 2005. Membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as 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 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. The record contains insufficient documentation regarding the National Boxing Team of Armenia and the petitioner's membership on the team.

The petitioner also submitted a certificate from the State Committee of Physical Culture and Sports Under the Government of Republic of Armenia. However, the record does not establish the nature or purpose of the certificate other than to identify the petitioner.

Noting that documentation in the record established that the petitioner was a member of the National Boxing Team of Armenia, the director apparently concluded that the petitioner meets this criterion. However, given that in 1999, a time in which he was purportedly on the national team, the petitioner was still competing as a junior and in local competitions rather than national ones, we find the lack of documentary evidence of his membership on the national team sufficient to withdraw the director's finding. The petitioner has failed to establish 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.*

In order to meet this criterion, published material must be primarily 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.

With the petition, the petitioner submitted copies of articles that appeared in various publications. One of the documents appears to be a section, "Sports 83," that may have appeared in a newspaper or other publication. The article reports that two young boxers, one of which was the petitioner, were scheduled to make their professional debut. Another document also appears to be a section, "Sports Weekly," from a newspaper or publication, and is about the petitioner. However, the documents do not identify the publication nor do they indicate a date or author as required by 8 C.F.R. § 204.5(h)(3)(iii). Further, several of the articles appear to be partial translations. The documents therefore do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

*Translations.* Any 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.

The petitioner also submitted a copy of an article from Fightnews.com, dated September 29, 2007, reporting on the petitioner's winning a bout in Montebello, California, and an article from Fightbeat.com, accessed on November 24, 2007, about a boxing event at the Warner Center that concluded with a statement that the petitioner did not fight because his opponent withdrew. The petitioner submitted no documentation to establish that any of the publications or the websites are professional or major trade publications or other major media.

The petitioner also submitted photographs, promotions of bouts in which the petitioner fought, promotions of the clubs to which the petitioner belonged, and information about the petitioner

from his personal website. However, these documents do not amount to published material about the alien as they do not include the information required by the regulation including the title of the piece, the date, the author's name, or information about the publication so as to qualify it as a professional or major trade publication or other form of major media.

In response to the RFE, the petitioner submitted the originals of some of the documents previously submitted and other articles, all of which he stated appeared in *Shrdjapat Weekly*.<sup>3</sup> All appear to be about the petitioner. However, the petitioner submitted no documentation to establish that *Shrdjapat Weekly* is a professional or major trade publication or other major media. On appeal, the petitioner states that *Shrdjapat* "is a very popular weekly among athletes and readers interested in the world of sports. In fact, it is the only weekly that regularly covers all types of athletic activities and sports in the whole region of Shirak Marz."

As conceded by the petitioner, *Shrdjapat Weekly* is at best a regional publication. Published work about the petitioner in a local publication is not evidence of his national or international acclaim.

The petitioner also submits on appeal copies of four articles from the *Glendale News-Press* dated in 2008. However, as these articles were after the petition was filed, they cannot establish the petitioner's eligibility for this immigrant 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). As such, these articles will not be considered in this proceeding.

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 submitted a November 10, 2007 "Certificate of Appreciation" presented to him by the Glendale Fighting Club "[i]n recognition of outstanding judging of the boxing bouts." In his RFE, the director advised the petitioner that to establish that he meets this criterion, he must provide documentation such as his qualifications as a judge of these bouts and to provide documentation as to the level of the boxers that he judged. The petitioner did not provide any additional documentation about this criterion either in response to the RFE or on appeal.

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."

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<sup>3</sup> The translations accompanying the documents alternatively spell the publication as *Shrjabat*, *Shrdjapat*, and *Shrdhapat*.

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, serving as a judge for a national or international competition for top athletes or professionals is of far greater probative value than serving as a judge of one's students or at a local competition involving amateur competitors or children.

The petitioner has failed to establish 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 director considered the petitioner's letters of recommendation and reference under this criterion. The letters attest to the petitioner's skills and abilities as an athlete and boxer. However, none of the letters establish that he has made a contribution of major significance to his field. For example, [REDACTED] a cable television host, stated that the petitioner is a personable and professional individual who received positive feedback from the television audience. [REDACTED] the chief financial officer of Global One Partnership, the petitioner's sponsor, stated that the petitioner "is a great fighter and a person." [REDACTED] "an Honored Master of Boxing of the USSR," stated that he has known the petitioner and that the petitioner "has had great achievements in amateur boxing," as well as being a winner at European and World Championships. [REDACTED] stated that the petitioner has "all the skills and makings of a professional boxer" and "can achieve outstanding results in professional boxing." [REDACTED] a boxing coach, stated that he is "confident" of the petitioner's "talent and ability to become a world champion." As stated above, although the letters submitted on the petitioner's behalf speak to his skill and competence, they do not specify exactly what the petitioner's original athletic contributions have been, nor do they explain 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. Without specific evidence describing the petitioner's contributions and the effect that such contributions have had on his field, the petitioner has failed to establish that he meets this criterion.

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

The director considered the petitioner's participation in boxing competitions under this criterion and concluded that "[w]hile the petitioner has enjoyed some success at lesser competitions involving athletes from several countries, the evidence does not indicate that these competitions

enjoy international prestige and recognition.” On appeal, the petitioner asserts that these competitions were at an international level and thus enjoy some prestige.

Nevertheless, the plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to boxers or athletes such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner’s participation in national and international boxing competitions has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete “displays” his or her work in the sense of competing in front of an audience. Accordingly, the petitioner has failed to establish that he 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 his field of endeavor. Review of the record, however, 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. 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.