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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 05 800 66427 Office: NEBRASKA SERVICE CENTER Date: FEB 02 2009

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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 F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics. The petitioner operates sports club facilities and seeks to employ the beneficiary as a wrestling coach and scout for a period of one year.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim as a wrestling coach with extraordinary ability in athletics. In denying the petition, the director noted that the petitioner had failed to submit a complete response to a request for evidence (RFE) issued on February 17, 2006.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary is recognized by authorities in his sport as "one of the very few in his field who can perform at the highest level in his sport" and therefore qualifies for O-1 classification pursuant to the standards set forth at 8 C.F.R. § 214.2(o)(3)(iii). Counsel submits a brief, but no new evidence, in support of the appeal.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

> Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

> *Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science education, business or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(*1*) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(*2*) 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 or international experts in their disciplines or fields;

(*3*) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(*4*) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(*5*) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(*6*) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(*7*) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(*8*) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (*o*)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and an appellate brief. The beneficiary in this case is a native and citizen of Hungary who last entered the United States on November 21, 2004 as a B-2 nonimmigrant visitor. The record shows that the beneficiary competed

as a junior and adult freestyle and Greco-Roman style wrestler between 1994 and 2001, winning several junior and adult national championships and one junior European championship. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a wrestling coach and scout. According to the petitioner's employment offer to the beneficiary, dated September 2, 2005, the beneficiary's duties in the United States will include the following:

> [W]restling in demonstration tournaments attracting interested children, personally demonstrating and applying your unique training methods and Greco-Roman wrestling style, designing training plans, conducting trainings, workshops for fellow coaches and interested wrestlers, clinics and practice sessions, participating in exhibition events and tournaments.

In denying the petition, the director found that the evidence of record was insufficient to establish that the beneficiary had achieved sustained national or international acclaim and recognition as a wrestling coach or scout. The director noted that the petitioner had submitted only one document in response to the RFE issued on February 17, 2006 and that the evidence was insufficient to meet the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B).

On appeal, counsel for the petitioner asserts that the petition was erroneously denied despite "clear evidence that Beneficiary is regarded by topmost authorities in his field as one of the very few on top of his field of endeavor." Counsel contends that the beneficiary is a "coach of world-class athletes, who, through his unique contribution, achieved the highest honors in the field of Greco-Roman Wrestling."

Counsel further asserts the following:

> As a coach of athletes, a person simply cannot accomplish a higher achievement in his or her field than witnessing his own athlete – whom he has personally trained and prepared for years – to receive the Olympic Gold Medal. . . . In the 100-year history of the Olympics Games, the United States has produced only two Olympic Champions of Greco-Roman Wrestling, accordingly, there are only two persons in the United States who could claim that high honor. That, indeed, is very few.
>
> In the present case, in 2004, [the beneficiary] has also achieved that highly coveted goal. One of his athletes, Mr. Istvan Majoros, is the reigning Olympic Champion. As the above statistics indicate, [the beneficiary] is one of the very-very few in his field of endeavor who can claim that he has coached to victory an Olympic Champion.

Counsel asserts that the beneficiary's extraordinary ability as a coach has been recognized by the Hungarian Wrestling Federation, which utilized the beneficiary's services in preparation for the 2004 Olympic Games, and by USA Wrestling, which has invited the beneficiary to coach the United States team for upcoming World Championships and the 2008 Olympic Games.

As noted by the director in the RFE, while a competitive wrestler and a wrestling coach share knowledge of the sport of wrestling, the two rely on different sets of basic skills. Thus, competitive wrestling and wrestling coaching/instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> 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 coach.

Id. at 918.

The statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). United States Citizenship and Immigration Services (USCIS) will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, 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 at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both a competitive wrestler and as a wrestling coach.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification.

Here, the petitioner has not submitted evidence that the beneficiary has received a major, internationally recognized award as a competitive wrestler. However, in response to the director's request for evidence that the beneficiary can meet the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B), the petitioner submitted an un-notarized affidavit dated May 6, 2006 from [redacted] of the Hungarian Wrestling Federation. Dr[redacted]a stated that between the years 2000 and 2004, the beneficiary participated in the prepatory work of the Hungarian national delegation selected for the Athens Olympic Games. Specifically, [redacted] stated that the beneficiary served as individual wrestling coach/wrestling partner for Istvan Majoros and Tamas Berzica. Dr. [redacted] further stated:

> [The beneficiary's] hard work and dedication was instrumental in [redacted] success that culminated in his winning of the Olympic Gold Medal. After the Olympic Games, at the National Gala Reception for the Olympic Gold Medalists, the President of the Hungarian Republic personally conveyed the gratitude of our nation for his invaluable contribution to [the beneficiary].

The record also contains a Certificate of Achievement stating that the beneficiary, based on his outstanding athletic achievements and sportsmanship "was selected in the Team of Olympic Hopefuls for 'Athens 2004.'"

The AAO notes that if it were adequately documented that the beneficiary had an instrumental role in coaching a recent Olympic gold medal winner in the sport of Greco-Roman wrestling, the beneficiary would meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A). However, the AAO finds the affidavit from [redacted] alone to be insufficient to meet this criterion for two reasons.

First, there is no supporting documentary evidence in the record to establish that [redacted] won the gold medal in 2004, or that the beneficiary coached [redacted], specifically, or the Hungarian Olympic team generally. If the beneficiary was primarily responsible for coaching this world-class athlete in preparation for the Olympic games, it is reasonable to expect there to be some documentary record of his role as a coach. 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)).

Second, the AAO finds it questionable that the petitioner's initial evidence contained absolutely no reference whatsoever to the beneficiary's coaching relationship with [redacted]. The petitioner initially submitted two letters from USA Wrestling, the governing body of amateur wrestling in the United States. In a letter dated September 12, 2005, [redacted] National Teams Director of USA Wrestling, described the beneficiary as "an internationally highly regarded wrestler," "a Greco-Roman junior European Champion," and notes that he has the skill as a coach to provide instructions and hands-on demonstrations. The petitioner also submitted a letter dated June 24, 2005 from [redacted] Assistant Greco-Roman national Wrestling Coach for USA Wrestling, and a former Olympic gold medalist. Mr. [redacted] only addressed the beneficiary's accomplishments as a competitive wrestler and expressed his opinion that the beneficiary can compete for the United States and "has the ability to bring a World or even Olympic medal to this country." Mr. [redacted] noted that he had invited the beneficiary to work and train with the United States team at the Olympic Training Camp in Colorado and to help the U.S. World Team train, and commented that "he is a great role model for the younger wrestlers." If the beneficiary had recently coached an Olympic champion, it is reasonable to expect that such achievement would have been listed among his accomplishments in the sport of wrestling.

The petitioner also failed to mention the beneficiary's alleged coaching relationship with an Olympic champion at the time of filing. The AAO finds the omission of this information significant, given that the petitioner seeks to hire the beneficiary as a coach, and not as a competitive athlete. For this

additional reason, the AAO finds the letter from alone insufficient evidence that the beneficiary has coached an athlete who has received a major, internationally recognized award.

As there is no evidence that the beneficiary has received a major, internationally recognized award, and insufficient evidence that the beneficiary has coached an athlete who has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

In order to meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(*1*). The letter from [redacted] of USA Wrestling listed the beneficiary's achievements in the sports of freestyle and Greco-Roman style wrestling between the years 1994 and 2001. The beneficiary was the Hungarian national adult champion in Greco-Roman wrestling in 2000 and 2001, and the Hungarian national junior champion in Greco-Roman style wrestling in 1997, 1998 and 1999. The beneficiary won the Junior European championship in 1999, and had a 4th place finish in the Junior World Championship in the same year. The record also contains copies of the certificate awarded to the beneficiary for his European championship win, and copies of newspaper articles regarding the beneficiary's national championship victories in 2000 and 2001. Overall, the evidence is sufficient to establish that the beneficiary's national championship victories resulted in his receipt of nationally or internationally recognized prizes or awards for excellence in competitive wrestling.

However, the record contains insufficient evidence to establish that the beneficiary has instructed or coached players who have won national or international competitions or other nationally or internationally recognized prizes or awards for wrestling excellence. The letter from [redacted] notes that the beneficiary has been invited to contribute to the training of the USA National Team for upcoming World Championships and Olympic Games. The record also contains an undated invitation from [redacted] for the beneficiary to participate in the U.S. World Team Trials Training Camp from May 13, 2005 until June 16, 2005, and to remain in the United States through September 2005 to help train the U.S. World Team. These letters are insufficient to establish that the beneficiary, as of the date of filing, has personally trained individual athletes who have received nationally or internationally-recognized awards or prizes for excellence in the sport of wrestling.

Furthermore, the letter from [redacted], as discussed above, only mentions two athletes by name, and only mentions the achievements of one athlete who was allegedly coached by the beneficiary. The deficiencies of this evidence have already been addressed. While the invitations to train athletes from USA Wrestling and the Hungarian Wrestling Federation are impressive, the record is lacking in documentation of the nationally or internationally-recognized achievements of individual athletes coached by the beneficiary, or documentation of the beneficiary's coaching relationship with any specific athletes. Accordingly, the beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), the petitioner must document 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.

The petitioner has not submitted evidence to establish that the beneficiary, as an athlete or as a coach, is a member of an association which requires outstanding achievements of its members. Therefore, the beneficiary does not meet this criterion.

To meet the third criterion, the petitioner must submit published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*).

The petitioner submitted copies of articles from Hungarian publications sufficient to establish that he achieved the level of national recognition as a competitive wrestler in Hungary, particularly between the years 1999 and 2001. The evidence would be sufficient to meet the third criterion if the beneficiary were coming to the United States as a competitive wrestler.

However, the petitioner did not provide any published materials referencing the beneficiary's work as a wrestling coach, or any published materials relating to wrestlers who have been coached by the beneficiary. Accordingly, the petitioner has not satisfied this third criterion as it pertains to the beneficiary's national or international recognition as a wrestling coach.

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*). No evidence was submitted to establish that the beneficiary meets this criterion as a competitive athlete or as a coach in the sport of wrestling.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*). The petitioner has not submitted objective evidence of the beneficiary's contributions of major significance as a wrestler or wrestling coach or the impact such contributions have had in the sport.

Similarly, the petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*6*).

The seventh criterion requires the petitioner to establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

The petitioner submitted the above-referenced letters from USA Wrestling, indicating that the beneficiary was invited in 2005 to assist in the training of U.S. wrestlers for the World Championships

and Olympic Games. While USA Wrestling would is an organization with a distinguished reputation in the sport, there is no evidence that the beneficiary was ever formally employed by the organization in a critical or essential capacity. At most, it appears that he might have worked with the team on an informal basis while in the United States on a nonimmigrant tourist visa.

Similarly, the record does not clearly establish that the beneficiary was employed by the Hungarian Wrestling Federation in a critical or essential capacity. The director specifically requested that, if the beneficiary has previously held such a position as a coach, the petitioner should submit documentary evidence, as well as an organizational chart evidencing how the beneficiary's position related to other positions in the organization. The petitioner did not submit such evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has not established that the beneficiary meets this criterion.

The eighth and final criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*). The petitioner has not documented the beneficiary's previous or current salaries or remunerations, nor has it claimed that his offered annual salary of approximately $42,500 should be considered a "high salary" for a wrestling coach. Accordingly, the petitioner has not met this criterion.

Overall, the record does not establish that the beneficiary has extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner has not established that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). Based on the evidence submitted, the petitioner has not established that the beneficiary's achievements have risen to this level in the coaching field.

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.