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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 18 2009

LIN 07 210 54020

IN RE: Petitioner: [redacted]
Beneficiary:

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, 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. 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. The director also determined that the petitioner had not submitted evidence that he would continue to work in his area of expertise in the United States and that his entry into this country would provide substantial prospective benefit to the United States.

On appeal, the petitioner submits further documentation in support of his petition.

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):

> Initial evidence: 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. Such evidence shall include

evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

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

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

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

(iv) 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;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

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

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This petition, filed on July 17, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a "Physical Rehabilitation and Massage Therapist expert." The record includes letters of support indicating that the petitioner worked as a massage expert and recreation specialist for the

Multinational Force and Observers from 1998 to 2005.[1] The petitioner's initial documentation included a letter from an official of the United States Embassy in Cairo stating that the petitioner served as a massage expert "for high diplomats, from 1983 to 1995." The petitioner also submitted March 2007 letters from the Shawl Injury Rehabilitation Center and the Gold's Gym in Oakland, California expressing interest in employing him.

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).[2]

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

At the time of filing, the petitioner submitted letters and certificates of appreciation from the Multinational Force and Observers complementing him for his services to the organization. On appeal, the petitioner submitted additional certificates of appreciation The petitioner has not, however, submitted evidence establishing that these letters and certificates of recognition and appreciation from his employer are tantamount to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submits a certificate from the Multinational Force and Observers stating that he "successfully participated in the 1984 Sinai 10Km Race." This certificate is simply an acknowledgment of the petitioner's participation in the race rather than a nationally or internationally recognized prize or award for excellence. Further, the petitioner has not established that competitive running is his field of endeavor or that he has competed regularly since 1984. The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5).

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[1] "The Multinational Force & Observers, is an independent international organization responsible for supervising implementation of the security provisions of the Treaty of Peace between Egypt and Israel." *See* http://www.mfo.org/1/4/base.asp, accessed on June 10, 2009, copy incorporated into the record of proceeding.

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

The petitioner also submits a Certificate of Appreciation from the Egyptian "Ministry of Interior, General Department for Police Sporting Union" stating that he "participated in activities and championship of the District in wrestling (Roman & Free Style) during the period from 1975 to 1977 and he has achieved many championship of the District; he has a high physical spirit and a high technical skill." The petitioner's successful achievements in the District championships reflects regional recognition rather than national or international recognition. Further, the petitioner has not established that competitive wrestling is his field of endeavor or that he has competed regularly since 1970s. As discussed, the statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5).

The petitioner failed to submit sufficient documentary evidence to establish that he has received any nationally or internationally recognized prize or award related to his field of physical rehabilitation and massage.

In light of the above, the petitioner has not 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3]

At the time of filing, the petitioner failed to submit any documentary evidence relating to this criterion. On appeal, the petitioner states that he has received "frequent media recognition through interviews for articles in governmental newspapers and magazines in Egypt." Although the petitioner submits copies of several articles, they are unaccompanied by certified English language **translations. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language** submitted to USCIS shall be accompanied by a full English language translation that 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. Further, there is no evidence showing

[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

that the articles were published in professional or major trade publications or some other form of major media. 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.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The petitioner submitted letters and other supporting documentation indicating that he worked as a massage expert and recreation specialist for the Multinational Force and Observers from 1998 to 2005. There is no supporting evidence showing that the Multinational Force and Observers has a distinguished reputation in the petitioner's field of endeavor. Further, there is no evidence indicating that the petitioner's role was leading or critical for the organization's operations. The documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the Multinational Force and Observers to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

The petitioner's appellate submission includes several "Certificate(s) of graduation" for his successful completion of various training programs, but these certificates do not relate to any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Further, there is no evidence demonstrating that earning such certificates equates to achievements consistent with sustained national or international acclaim at the very top the field.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The director also determined that the petitioner had not submitted evidence demonstrating that he would continue to work in his area of expertise in the United States and that his entry into the United States will substantially benefit prospectively the United States. We concur with the director's findings with regard to these issues. Although the petitioner has submitted letters from potential employers, section 203(b)(1)(A)(i) of the Act requires that the petitioner demonstrate extraordinary ability "in the sciences, arts, education, business, or athletics." In this instance, the petitioner has not established that his occupation as a Physical Rehabilitation and Massage Therapist expert falls within one of the preceding five categories. As petitioner's area of claimed extraordinary ability does not fall within any of the categories enumerated, he cannot establish that he seeks to continue work in an area of

extraordinary ability as required by statute and regulation. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). We, therefore, concur with the director's determination that the petitioner failed to establish that he seeks to enter the United States to continue in an area of extraordinary ability and find, beyond the decision of the director, that the petitioner has also failed to establish that his occupation falls within one of the categories enumerated in section 203(b)(1)(A)(i).

We also concur with the director's remaining determination that the petitioner has not established that his work with clients at a rehabilitation center or a gym in Oakland, California will provide substantial prospective benefit to the United States. The proposed benefit of the petitioner's work would be so attenuated at the national level as to be negligible.

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. Nor is there evidence demonstrating that the petitioner has extraordinary ability in the sciences, arts, education, business, or athletics, that he seeks to enter to the United States to continue work in his area of extraordinary ability and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i), (ii) and (iii) 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.

ORDER: The appeal is dismissed.