U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: FEB 25 2003

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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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. The director also questioned whether the petitioner would continue in his area of expertise.

On appeal, counsel argues that there is no time limit in which to apply once one can meet the requirements set forth below. Counsel's argument is not persuasive. As quoted below, the law requires *sustained* national or international acclaim. Where an alien attains national acclaim but does not sustain such acclaim up until the time of filing, the alien cannot establish his eligibility for this classification. Thus, in our analysis below, we will evaluate the evidence as to whether it demonstrates sustained acclaim at the time of filing.

Also on appeal, in response to the director's concern that the petitioner will not continue in his area of expertise, the petitioner submits what counsel describes as "a letter from the U.S. Bobsled and Skeleton Federation, which invites [the petitioner] to participate in the U.S. team." A review of the letter, however, reveals that it is simply an invitation to try out for the team. As the letter is addressed to "whom it may concern," it appears to be issued in response to a request for evidence to support the petition and is not an unsolicited invitation motivated solely by the petitioner's past accomplishments. Moreover, this letter is inconsistent with the original claim that the petitioner intends to teach and coach bobsledding.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term 'extraordinary ability' means a level of expertise indicating that the individual is one of that small percentage who 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 Service 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.

The record is not entirely consistent as to what employment the petitioner seeks in the United States. Section 4 of the petition, which requests information regarding the proposed employment, is blank. In his initial letter, counsel asserts that the petitioner "will be an asset to the United States by teaching and coaching American bobsledders in the United States." On appeal, however, counsel implies that the petitioner intends to try out for the U.S. national bobsledding team as an athlete.

As the initial claim was that the petitioner intends to teach and coach, that issue bears some discussion. 8 C.F.R. 204.5(h) requires the beneficiary to "continue work in the area of expertise." While a bobsledder and a coach certainly share knowledge of bobsledding, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. We do not deny that there exists a nexus between bobsledding and coaching. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. 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 level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach of athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated extraordinary ability as a coach or as an athlete. For the reasons discussed below, the petitioner has demonstrated neither. If the petitioner had demonstrated extraordinary ability as an athlete, we would then consider the level at which the petitioner has coached.

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, international 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. The petitioner has submitted evidence relating to the following criteria.

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

The petitioner received a few local honors from the City of Penzberg. More significantly, the petitioner won several junior and senior championships. In January 1996, the petitioner won second place at the Junior World Championship at Koenigssee. He also won the gold medal in both the two- and four-man races at the Junior World Championship for 1995/1996 in Cortina d'Ampezzo. The commentary reflects that the petitioner was the first pilot to win both titles at a Junior World Championship. The petitioner also won the gold medal in the Junior World Championship for the four-man race at Lillehammer in March 1995 and at two Junior World Championships at Winterberg in December 1991 and February 1992. Further, the petitioner won first place at the Junior World Championship at Koenigssee in January 1991 and again in November 1993. Finally, the petitioner took third place at the Bavarian Championship in 1990 and second place at the German Junior Championship in 1989.

In addition to the junior championships, the petitioner placed third at the Weltcup in 1994. Further, the petitioner won the four-man European Cup at Koenigssee in 1994 and 1996. Both competitions appear to be above the junior level. For the 1995/1996 and 1996/1997 seasons, the petitioner was ranked third in the European Cup standings.

The evidence adequately reflects that the petitioner won nationally/internationally recognized awards up until 1996, including in senior competitions. Had the petitioner submitted evidence of any participation in the sport and sustained acclaim under the other criteria past 1996, the lack of awards since that time would not be determinative. As will be discussed below, however, the record contains no evidence of the petitioner's participation in the sport after 1996. Further, the evidence relating to the remaining criteria also stops in 1996.

Finally, the record contains no evidence that the petitioner has coached athletes who have won nationally or internationally recognized awards during the period in which they competed for those awards. As such, at no point has the petitioner met this criterion as a bobsledding coach.

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.

The record reflects that the petitioner was a member of the German National Junior Bobsledding Team through at least 1995. In 1994, 1995, and 1996, the petitioner appears to have competed as part of the German National Senior Bobsledding Team. Counsel concedes that the petitioner did not compete after 1996. The record contains no evidence that the petitioner has coached a national team. Thus, the evidence for this criterion is not indicative of *sustained* national acclaim as an athlete or any acclaim as a coach.

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

The petitioner submitted several newspaper articles, but did not provide the name of the publications in which the articles appeared or any information about the publications, such as their circulation. As such, we cannot determine whether any of these publications constitute major media. Further, the petitioner only provided the date for one of the articles as required by 8 C.F.R. 204.5(h)(3)(iii), although the dates for some of the articles can be surmised by the events they report.

In addition, some of the articles are not primarily about the petitioner. Specifically, one article is about Michael Sperr and mentions the petitioner as a "next-generation driver" at the top of the nationals. Similarly, the article "All German Bobsleds on the 'Winning Platform'" is an article about a competition in Koenigssee that only mentions the petitioner to note that he was the youngest pilot. The 1991 article reporting the results of the German Junior Masters appears in either a magazine entitled *Bobsport* or the "Bobsport" section of a different magazine. While the results appear under the heading "Team of [the petitioner] Pulls Through," the results are published without an accompanying article. The publication of competition results by themselves is not published material about the petitioner himself such that it reflects national or international acclaim. Similarly, the petitioner submitted several short blurbs and captions reporting results. Again, these are not articles about the petitioner. While the reporting of the results reflects the importance of the competitions, acknowledged above, they do not constitute published material primarily about the petitioner.

The article about the awards presented by the [redacted] is primarily about the ceremony at which 160 athletes, including the petitioner, received city honors. In addition, this article appears to be a local interest story consistent with a local paper. As such, it is not clear that they appeared in nationally circulated major media. The record contains similar articles about other local award ceremonies.

Several of the articles suggest that they appear in local publications. The article reporting the results of the German Junior Championships as well as some of the other articles make several references to the team members or to the petitioner individually as being from Penzberg, suggesting that the articles appeared in a local Penzberg paper. The articles "German Title for SCR 4-Man Team: [the petitioner's] [redacted]," "Now However: [the petitioner] Will Start at the World Cup," and others appear in the "Lokales" section, suggesting they did not appear in a nationally relevant section of a nationally circulated publication. The article [redacted] [the petitioner] Out in Front, [redacted] references the petitioner as being from Penzberg, but does not mention the hometowns of the other athletes discussed. Once again, this article appears to be a local interest story.

The petitioner submitted one article entirely about him and his preparations for the Lillehammer Olympics. The record contains no evidence that the petitioner was a member of the German

Olympic team at Lillehammer. Another article suggests that the petitioner competed for a slot at the Lillehammer Olympics, but did not qualify after a sixth place finish.[1] Instead, the petitioner competed in junior competitions on the Lillehammer track after the Olympics ended. Regardless, the record contains no evidence regarding the publication in which the lengthy article about the petitioner appeared, including its circulation.

While the petitioner did not provide the dates for any of the above articles, the articles appear to be contemporaneous with the petitioner's competitive history, which ended in 1996. Regardless, as the petitioner has not established that any of these articles were both primarily about the petitioner and published in major media, the petitioner has not established that he met this criterion in 1996 or at the time of filing.

Finally, the record contains no articles about the petitioner's abilities as a coach. Thus, the petitioner does not meet this criterion as a coach.

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.

One of the news articles submitted references to the petitioner's position as a "judge member for the international association." The record contains no evidence from the international association or information regarding the role of a judge member or the selection criteria. As such, the record does not establish that the petitioner could ever have met this criterion.

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

The petitioner received several honors from the City of Penzberg, some for contributions to the sport of bobsledding. This local recognition, however, is not indicative of a contribution to the entire sport of bobsledding. The petitioner has not established that he has set a world record or similarly set a standard to which other bobsledders aspire.

In light of the above, the petitioner has not established that he had sustained acclaim back in 1996. The record is even less persuasive that the petitioner sustained what recognition he did have up until the date of filing. Nor has the petitioner established any evidence of his acclaim as a coach. Thus, even if the petitioner had established sustained acclaim as an athlete, he would have to demonstrate some coaching experience at the national level. The record contains no evidence that the petitioner has ever attempted to coach at any level.

Finally, even if we accepted counsel's claim on appeal that the petitioner intends to compete, not coach, we concur with the director that the record does not establish the petitioner's ability to

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[1] This article is inconsistent with counsel's assertion in response to the request for additional evidence that the petitioner "was scheduled to attend the winter Olympics but unfortunately he suffered an injury which prevented him from competing."

continue in his area of expertise. While the evidentiary requirements to establish the petitioner's intent are minimal, we cannot ignore that the petitioner has not been active as a bobsledder since 1996. The petitioner has provided no evidence that bobsledding does not require continuous participation in the sport to remain competitive. In light of the petitioner's lack of participation in his area of expertise during the five years before filing the petition, the invitation to try out for the U.S. Bobsledding team does not overcome the director's concern. A solicited letter from the U.S. Bobsled and Skeleton Federation inviting the petitioner to try out for the team two years after the petitioner entered the United States is not evidence that the petitioner is actively being recruited by the U.S. Bobsled team based on his accomplishments with the German team.

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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a bobsledder 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 indicates that the petitioner shows talent as a bobsledder, but is not persuasive that the petitioner's achievements currently set him significantly above almost all others in 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 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.