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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

B2

[redacted]

File: WAC 01 201 52079 Office: California Service Center Date: JUL 18 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]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on April 10, 2001, seeks to classify the beneficiary as an alien with extraordinary ability as a [redacted] The record reflects that the beneficiary has been present in United States since 1995. The statute and regulations require the beneficiary's acclaim to be sustained. Given the length of time between the beneficiary's arrival in the United States and the petition's filing date, it is reasonable to expect him to have earned national acclaim in the United States during that time. The beneficiary has had ample time to establish a reputation as a coach/instructor in the United States.

Much of the petitioner's documentation pertains to the beneficiary's career as a [redacted] in [redacted] from 1990 to 1995. The documentation submitted reflects that the beneficiary has not actively competed since that time. There is no evidence that the beneficiary remains consistently active as a competitor in his sport at the national or international level. 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The beneficiary, however, intends to work as a coach/instructor in the United States. While a roller figure skater and a coach certainly share knowledge of artistic roller skating, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. Ziglar*, 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 court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. 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 who has an established a successful history of coaching 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 the beneficiary's extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated the beneficiary's extraordinary ability as an athlete, we will consider the level at which he has successfully 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 that, counsel claims, meets 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 submitted a letter from [redacted] She states:

[The beneficiary] participated in artistic championships organized by the then [redacted] from a very young age. The [redacted] is now known as [redacted]

[The beneficiary] won the [redacted] at the National Championships in:

[redacted]

* * *

RSSA [has been] affiliated with the Federation International de Roller Sports since 1969.

Information provided by the petitioner from the [redacted] website indicates that [redacted] "is the international governing body of roller skating worldwide" and that it has been "recognized by the International Olympic Committee since 1975." [redacted] has four technical committees, one of which is the [redacted] controls the discipline of artistic roller skating.

A letter from [redacted] confirms that the beneficiary won the [redacted] notes that the beneficiary represented [redacted] While the beneficiary received national recognition in South Africa in the early 1990's, there is no evidence establishing that his previous acclaim as an athlete has been sustained.

The petitioner also submitted several honor certificates and participation diplomas, but such evidence is reflective of local recognition and would not rise to the level of a national award for excellence in artistic roller skating.

We note here that the awards submitted by the petitioner were all based on the beneficiary's ability as a roller figure skater. These awards do not establish that the beneficiary has sustained national or international acclaim as a coach. It is not clear that significant awards exist for roller skating coaches. However, nationally or internationally recognized prizes or awards won by teams or individuals coached by the beneficiary may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). The petitioner in this case has submitted evidence showing that one of the beneficiary's students [redacted] placed seventh at the [redacted] While placing as a finalist is to be commended, the regulation clearly requires the receipt of a nationally or internationally recognized "prize or award." Letters from the parents of other children coached by the beneficiary indicate that he remains active as a coach, but the record contains no evidence that any of his skaters have earned above a seventh place at a national level competition.

The record contains no evidence of national awards won by the beneficiary or his students from 1996 through the petition's filing date. Without further evidence showing that the beneficiary himself has won national awards in recent years, or that any of his students have competed successfully at the national level subsequent to 1998, the petitioner has failed to establish the beneficiary's sustained acclaim as roller skater or 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.

In order 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. In addition, it is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Counsel states that the beneficiary belongs or has belonged to the following associations: [redacted] The petitioner has provided evidence confirming the beneficiary's membership in these organizations. However, the petitioner has offered no first-hand evidence of their specific membership requirements. It appears that any skater competing under their jurisdiction is admitted to membership simply by completing an application and paying a nominal fee. For example, USA Roller Sports admits first-time registrants who complete a one-page application and send in "birth verification" and a $30 non-refundable membership fee. Clearly, outstanding achievement is not a membership requirement.

Also submitted was evidence showing that the beneficiary was selected four times to represent South Africa at the World Championships. Letters from [redacted] and [redacted] confirm the beneficiary's participation in the [redacted] states that in order to qualify for the World Championships, "skaters must be in possession of a silver test certificate and have placed first or second in the National Championship of that year." While national team participation is not an "association," we could consider such evidence as comparable under 8 C.F.R. § 204.5(h)(4) because membership on such a team (as a top skater from one's country) is the result of multi-level national competition, supervised by national experts. The statute and regulations, however, require the beneficiary's acclaim to be sustained and there is no evidence of the his national team participation subsequent to 1995. Furthermore, the beneficiary was selected for the team based on his ability as a roller skater, not as a coach. Thus, his participation on the South African national team cannot establish that he has earned national or international acclaim as a coach/instructor.

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.

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary 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 distribution and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. 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.

The petitioner submitted eight newspaper clippings from four local newspapers. These articles are not reflective of major media coverage. Half of the articles provided were not properly translated. By regulation, any document containing foreign language submitted to the Bureau 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. 8 C.F.R. § 103.2(b)(3). Half of the articles devote only one or two sentences to the beneficiary. The plain wording of the regulation, however, requires the petitioner to submit "published materials about the alien," and articles that barely even mention the beneficiary would not satisfy this criterion. All but one of the newspaper clippings (a local article about [redacted] that does not name the beneficiary) are from the early 1990's. Thus, the petitioner has not demonstrated that the beneficiary has captured sustained attention from major national media. Furthermore, none of the articles provided describe the beneficiary's activities as a coach. In sum, the evidence provided fails to show that the beneficiary has sustained national or international acclaim as an artistic roller skater or 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.

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, the petitioner must demonstrate that the beneficiary's sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve accomplished professionals in the beneficiary's field. For example, judging a national championship would carry far greater weight than judging a citywide competition.

On appeal, counsel states: "[The beneficiary] has judged local [redacted] competitions in [redacted] [He] has also judged Southern California League Competitions..."

A letter from [redacted] states: "[The beneficiary] has judged the work of others at two Southern California League Competitions – San Bernadino, 1995, and National City, 1996." No documentary

evidence of national or international publicity surrounding the competitions was provided. Furthermore, the events judged by the beneficiary were local or regional, rather than national, in scope and thus fail to satisfy this criterion.

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

Counsel states: "[The beneficiary] was the first and only member in South Africa to compete in the World Championships in 17 years, receiving a trophy for this. He was also the first South African to land a triple jump in competition." The significance of the first accomplishment should be viewed in the context of a statement from [redacted] She states: "South Africa was banned from participation in international and world championships from 1977 to 1991 during the apartheid era. When we were allowed back in international competitions, [the beneficiary] was the first artistic skater who received his national colors to participate in the World Championships." No information has been provided regarding how the beneficiary actually placed at the World Championship competitions. The fact that the beneficiary was among the first to compete at the international level after the apartheid era carries little weight in this matter. In this case, the petitioner has not provided substantive documentary evidence showing that the beneficiary's selection to compete internationally or his landing of a triple jump attracted significant national attention or influenced his sport. If the beneficiary's achievements are not widely praised outside of a handful of his personal acquaintances, then it cannot be concluded that he enjoys sustained national or international acclaim. Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Evidence in existence prior to the preparation of this petition would carry greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

Counsel observes that the beneficiary "has taught young athletes successfully by them making the team for National U.S. Championships in Lincoln, Nebraska." The record, however, contains no documentation to support this claim. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nor does the record contain documentation to support counsel's claim that the beneficiary "has been televised on sports broadcasts to promote the sport of roller skating, by interviews and performances, thus helping promote awareness of the sport." Without evidence demonstrating that the beneficiary was at the forefront of a national promotional campaign resulting in a significant degree of national interest in artistic roller skating (as demonstrated by, for example, heavy enrollment figures in [redacted] or USA Roller Sports that were directly attributable to the beneficiary's outreach efforts), the beneficiary's promotion of the sport would not constitute a "contribution of major significance."

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

Counsel states: "[The beneficiary's] artistic display in his field at present may be observed at [redacted]" The wording of this criterion, however, indicates that it is

intended for visual artists, such as sculptors and painters, rather than for athletic performance or coaching. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that the alien performed in a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment.

Counsel states: "[The beneficiary] has played a critical role in the sport of roller skating because he has created the organization he was associated with, [redacted] and has established a strong reputation in this sport, because [the beneficiary] has competed in four World Championships [sic]..." The record, however, contains no evidence to establish that the beneficiary created the [redacted] *Matter of Laureano, Matter of Obaigbena,* and *Matter of Ramirez-Sanchez, supra*. In fact, the letter from [redacted], states that her organization has existed "since 1969" – two years before the beneficiary was born. Therefore, we find it impossible for the beneficiary to have "created" that organization.

The beneficiary's participation in the World Championships in the early 1990's reflects a competitive, rather than a coaching, role.

The petitioner submitted honor certificates and participation diplomas under this criterion, but such evidence falls under the prizes and awards criterion and has already been addressed.

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

On appeal, counsel asserts that the beneficiary "commands a high salary" due to his prior awards and international experience. The petitioner submits a letter from [redacted] where the beneficiary operates his [redacted] states: "I can confirm that [the beneficiary] charges $50.00 per hour for singles lessons and $60.00 per hour for pairs lessons." The plain wording of the regulation, however, requires the petitioner to submit evidence showing that the beneficiary "has commanded" a high salary or remuneration. The record contains no documentary evidence of the beneficiary's past earnings in the form of income tax forms, W-2 forms, or other payroll documentation. In order to satisfy this criterion, the petitioner must demonstrate that the beneficiary's remuneration is high when compared with the most experienced and well-known roller skating coaches around the country, including national team coaches. The record offers no objective comparison showing that the beneficiary commands a high salary in relation to others in his sport. In sum, the evidence provided by the petitioner does not reflect that the beneficiary has commanded a salary or other remuneration placing him at the very top of his field.

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

Counsel states: "[The beneficiary] has experienced commercial success relating to the sport of roller skating." Counsel cites a letter from [redacted] stating that the beneficiary "is responsible for developing a new program, the [redacted] Academy in [redacted] The petitioner, however, has provided no financial documentation establishing that the academy is commercially successful or nationally acclaimed. The plain wording of the regulation indicates that this criterion was intended for the "performing arts" rather than athletics and requires the petitioner to submit evidence of the beneficiary's commercial success in the form of "sales" of compact disks, cassettes, videos, or concert tickets. The petitioner has provided no such evidence.

In this case, the petitioner has failed to submit evidence demonstrating the beneficiary's sustained national or international acclaim as a coach or skater since coming to the United States in 1995. While the beneficiary may have enjoyed some national attention as a skater in [redacted] in the early 1990's, the record lacks evidence demonstrating the beneficiary's acclaim (national or international) as a skater or coach from 1995 through the present.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the beneficiary has distinguished himself as roller figure skating instructor 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 her field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) 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.