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U.S. Citizenship and Immigration Services

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[redacted]

FEB 24 2004

FILE: WAC 01 201 52079 Office: CALIFORNIA SERVICE CENTER Date:

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:

[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.

Mari Johnson

For Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will be denied.

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.

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).

This petition, filed on April 10, 2001, seeks to classify the beneficiary as an alien with extraordinary ability as a "Roller Figure Skating Instructor." 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 this country.

As stated the AAO's July 18, 2003 decision, the majority of the petitioner's documentation pertains to the beneficiary's career as a roller figure skater in South Africa from 1990 to 1995. The record contains no evidence showing that the beneficiary has remained active as a competitive roller figure skater at the national or international level since that time. We note here that 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." Documentation in the record indicates that the beneficiary intends to work as a coach/instructor in the United States. Therefore, as explained in the appellate decision, the beneficiary must be evaluated in terms of his expertise as a coach/instructor.

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. In the appellate decision, the AAO upheld the director's determination and found that the petitioner had not established that the beneficiary 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.

On motion, the petitioner submits a joint letter from two representatives of the Southwest Pacific Artistic Regional U.S.A. Roller Skating organization [redacted] and [redacted] Also submitted was a letter from [redacted] Vice President, Huntington Beach Skating Academy. These letters were marked in handwriting as "Exhibit 1." In a brief accompanying the motion, counsel simply re-states the AAO's appellate findings for each of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). After citing the text from the AAO's decision for each particular criterion, counsel responds by stating "[s]ee Exhibit 1." Counsel does not identify specifically any erroneous conclusion of law or statement of fact in the AAO's appellate decision.

Furthermore, the information contained in the two letters provided on motion relates only to the "prizes or awards criterion." The petitioner, however, must demonstrate that the documentation contained in the record satisfies at least three of the regulatory at 8 C.F.R. § 204.5(h)(3). The evidence presented by the petitioner will be addressed below under the pertinent regulatory criteria. It should be reiterated, however, that the petitioner must show the beneficiary has earned sustained national or international acclaim at the very top level.

Subsequent to filing the present motion on August 18, 2003, counsel for the petitioner has since supplemented the record with additional documentation. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an appeal once it has been filed. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence in furtherance of a previously-filed motion. The regulations grant the petitioner 30 days to contest the dismissal of the appeal via motion to reconsider, with no provision for extension or later submission of supplementary documentation. By filing a motion, the petitioner does not guarantee himself an open-ended period in which to supplement the record with evidence that plainly did not exist at the time the petition was filed. Any consideration at all given to documentation submitted to the AAO after a motion has been filed is entirely discretionary.

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

The AAO's appellate decision stated:

> A letter from [redacted] President of CIPA, confirms that the beneficiary won the South African National World Class Men's Championship in 1991, 1993, 1994, and 1995. Mr. [redacted] notes that the beneficiary represented South Africa internationally at the World Championships in 1992, 1993, 1994, and 1995. 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.
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> 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, Amanda Holmes, placed seventh at the U.S. National Competition in Fresno, California, in 1998. 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.

According to the two letters presented on motion, skaters coached by the beneficiary have won the following awards prior to the petition's filing date:

[redacted] and [redacted]

1st Place, Elementary Pairs, 1998 Southwest Pacific Regionals, Bakersfield, CA
6th Place, Elementary Pairs, 1998 U.S. National Championships
1st Place, Winter Invitational, 1999 Winter Invitational in Portland, Oregon

[redacted]

3rd Place, Juvenile Girls Freeskating, 1998 Southwest Pacific Regionals, Bakersfield, CA
6th Place, Juvenile Girls Freeskating, 1998 U.S. National Championships[1]
2nd Place, 1998 California State Games
4th Place, Juvenile Girls Freeskating, 1999 Southwest Pacific Regionals
2nd Place, 1999 California State Games
2nd Place, 1999 Winter Invitational in Portland, Oregon
2nd or 3rd Place, Juvenile Girls Freeskating, 2000 Southwest Pacific Regionals, Fresno, CA (the two letters offer conflicting information)
5th Place, Juvenile Girls Freeskating, 2000 U.S. National Championships
3rd Place, Elementary Girls Freestyle, 2000 Las Vegas Invitational
2nd Place, Girls Freeskating, 2001 Gold Skate Classic, Fresno, CA

The remainder of the awards listed in the two letters came into existence subsequent to the petition's filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. A petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. Therefore, recent awards acquired by the beneficiary's skaters subsequent to the petition's filing date cannot retroactively establish his eligibility as of that date. Without evidence showing that, as of the filing date, the beneficiary's skaters had a history of earning medals (gold, silver, or bronze) at national level competitions (such as the U.S National Championships), the evidence presented is not adequate to fulfill this criterion.

The letter from [redacted] and [redacted] states that the "Gold Skate Classic is an international invitational showmanship competition." The petitioner, however, has provided supplemental evidence that directly contradicts their assertion. The record contains an event program from the 37th Annual Gold Skate

[1] According to a newspaper article contained in the record entitled "Big Dreams, Little Girls," [redacted] placed 7th, not 6th, at the U.S. National Competition in Fresno in 1998.

Classic Invitational Roller Figure Skating Show Competition (2003) held in Fresno, California. A review of the participants in this event indicates that almost all of them are from skating clubs located in California. It has not been shown through contemporaneous, first-hand evidence (such as an event program or a published article) that the Gold Skate Classic, Winter Invitational in Portland, or Las Vegas Invitational reflect competition at the national, rather than the regional, level. Nor does the record adequately establish that the competitive categories in which the beneficiary's skaters competed at these three events reflect the top tier of youth competition. For example [redacted] states: "[The beneficiary] coached [redacted] and [redacted] both of them having only skated for ten months, to [become the] Southwest Pacific Regional Champions in the Elementary Pairs division." In order to demonstrate eligibility under this criterion, however, the petitioner must show that the beneficiary's skaters competed successfully at the highest level of national competition rather than at an "elementary" or intermediate level.

In regard to the beneficiary's individual awards here in the U.S., [redacted] states that he took third place as a competitor in the 1998 Gold Skate Classic. As stated above, this competition, held annually in California, was mostly limited to participants from California skating clubs. Therefore, it does not constitute recognition at the national level. [redacted] also states that in 2003 the beneficiary was honored with a Wintz Award, a coaching honor presented by the Southwest Pacific Artistic Regional U.S.A. Roller Skating organization. Aside from the beneficiary receiving this award subsequent to the petition's filing date, the record contains no evidence to support [redacted] claim that "[t]his award holds high national acclaim." We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide evidence to establish that the awards presented to the beneficiary enjoy significant national or international stature. In this case, the petitioner has not submitted evidence to establish the degree of recognition accorded to the Wintz Award or the event at which it was presented. For example, the record contains no evidence of national media coverage surrounding the beneficiary's receipt of the award. Assertions from witnesses selected by the petitioner, such as [redacted] and [redacted], when unsupported by first-hand evidence of national acclaim, are not adequate to demonstrate that the Wintz Award commands significant recognition beyond the regional organization that presented it.

> *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 AAO's appellate decision stated:

> 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 Amanda Holmes from 1998 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.

The brief presented by counsel on motion does not directly address these findings. More than one month after filing the present motion, the petitioner submitted two articles from the *Lincoln Journal Star* dated July 28th and 30th, 2003. Neither article mentions the beneficiary, nor are his skaters the main subject of the newspaper coverage. Rather, captioned photos of [redacted] (a skater coached by the beneficiary) appear adjacent to the published articles. These captioned photos do not constitute qualifying published material under this criterion. Furthermore, the articles appearing in the *Lincoln Journal Star* were published subsequent to the petition's filing date.

A review of the remainder of the evidence submitted as a supplement to the motion, apart from being untimely, indicates that it pertains to the beneficiary's activities subsequent to the filing of the petition. *See Matter of Katigbak, supra.* Subsequent developments in the beneficiary's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. Regardless, none of the remaining supplemental evidence pertains to any further regulatory criteria.

In this case, the petitioner has failed to submit evidence demonstrating that the beneficiary has earned 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 South Africa 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 petition's filing date of April 10, 2001. Nor does the record adequately demonstrate that the beneficiary has enjoyed a successful history of coaching athletes at the national level prior to the petition's filing date.

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. Here, 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.

For the above stated reasons, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The AAO's decision of July 18, 2003 is affirmed. The petition remains denied.