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U.S. Citizenship and Immigration Services

B2

[redacted]

JAN 27 2004

FILE: [redacted] 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:

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.

for Mari Johnson
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 (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 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.

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 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 petitioner is an equestrian who specializes in show jumping. The petition is unclear as to what occupation the petitioner seeks. The Form I-140, Immigrant Petition for Alien Worker, lists the job title as equestrian athlete competitor. However, the petitioner submits evidence of his abilities as a competitive athlete and horse trainer. The petitioner must in any event demonstrate that he is one of the few at the very top of his profession as evidenced by sustained national or international acclaim.

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 claims to meet 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 submits certificates of merit from the Egyptian Horsemanship Association evidencing that he placed first or second in several show-jumping events from 1985 to 1990. Nothing in the record indicates that these competitions were national or international in scope. We note that the certificate of merit for the 1985-1986 Annual Crossing "Cup" limited competition to those in the "Junior Novice Class under 18 years." This requirement eliminated the more competitive riders and could not serve to place the petitioner as one of the best riders overall in his age group.

The record also contains a letter from the Federation Equestre Egyptienne (FEE) stating that the petitioner placed second in one event at the 1985/86 Junior Egyptian National Championship, first in one event at the 1986/87 and 1988/89 Egyptian National Championships, and second in one event at the 1989/90 Egyptian National Championship. The letter also states the petitioner placed second in both the individual and team competitions at an international show jumping event in 1990.

Notably missing from the record, however, is any evidence of the petitioner's competitive achievements since 1990. The regulation provides preference status for individuals who have *sustained* national or international acclaim. The evidence presented does not demonstrate the petitioner has met this criterion.

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 petitioner submits membership cards showing his association with USA Equestrian, and in the American Horse Shows Association and the Pacific Coast Horse Shows Association. The record also reflects he is or was a member of the FEE. The petitioner submits no evidence of the membership qualifications for these organizations; however, it appears that membership in these organizations is a prerequisite to compete in their sponsored events. To demonstrate that membership in an association meets this regulatory criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In his response to the director's request for evidence (RFE) dated March 6, 2003, the petitioner submitted letters of support for his petition from [redacted] Chief Executive Officer of Half Moon Bay, a horse farm in Burbank, California [redacted] General Manager of the Los Angeles Equestrian Center; and a letter from the head of the Smouha Club equestrian team outlining the petitioner's competition and training experience as a member of the club. The petitioner apparently submitted these letters to support the second part of the criterion, "as judged by recognized national and international experts in the equestrian field." This is an obvious misreading of the criterion, as the letters do not address the petitioner's membership in an association or other organization where membership is based on outstanding achievements. The evidence does not demonstrate that the petitioner meets this criterion.

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 a picture of himself from the May 1995 edition of *Egypt Today* with the caption that the petitioner "makes show jumping look easy." The petitioner also submitted videos and still photos of himself and of horses he has trained competing at various show jumping events. The evidence does not establish that these photos and videos are major media coverage about the petitioner or his work. The *Egypt Today* article does not mention the petitioner further by name. The petitioner also submitted an article from *The Equestrian*, the newspaper of the Los Angeles Equestrian Center, which features the young rider of the horse the petitioner trained. To meet this criterion, published materials must be primarily about the petitioner and 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. The evidence does not establish that the petitioner meets this criterion, either as an athlete or as a trainer.

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

As noted by the director, the petitioner submitted ample evidence of his participation in show jumping events. However, such participation is a normal and expected element of competitive athletics. The petitioner has not shown that his participation in these events is above and beyond that normally expected of competitive athletes. Further, this criterion does not apply to competitive athletics. The AAO has consistently interpreted this criterion to apply to demonstration of extraordinary ability in the visual arts, as indicated by the language of the regulation.

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

As evidence that he meets this criterion, the petitioner states his horse is from the breed line of The Jockey Club of Lexington, Kentucky. The petitioner does not indicate he is a member of The Jockey Club, nor does he indicate that he has played a leading or critical role for the club.

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

The petitioner submitted a copy of a check for $82.50 that he won riding his horse "Course of Action." He explains that he still rides as an amateur and this would explain his lack of substantial winnings and doesn't necessary reflect his ability as a rider. The petitioner also submitted a copy of a bill of sale in the amount of $25,000 for the horse he trained and sold. There is no evidence in the record to establish that this sale is significantly high as compared with sales of horses trained by other talented horse trainers. Furthermore, a single sale does not establish that the petitioner will experience the same results in future sales and does not meet the requirements of this criterion.

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

The petitioner apparently claims to meet this criterion based on the success of the horse he trained. Horse shows and show jumping are athletic events and do not represent the performing arts. The petitioner does not meet this criterion.

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 an athlete or trainer 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 attained some success as an equestrian early in his career, but is not persuasive that his achievements 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.