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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 27 2004

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.

for Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

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

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

In its decision affirming the director's denial of the petition, the AAO noted that the record was not consistent as to the employment the petitioner was seeking in the United States. No employment was listed on the petition but in his initial letter, the petitioner asserted he would be an asset to the United States by coaching and teaching bobsledding. On appeal, however, the petitioner implied he would be competing as an athlete. The AAO analyzed the petitioner's claim of extraordinary ability first as an athlete and then as a coach, and determined that the evidence did not establish that the petitioner met the criteria listed in 8 C.F.R. § 204.5(h)(3) as either an athlete or as a coach. The decision further noted that the petitioner had not competed in bobsledding since 1996, and no evidence existed that he would or had the ability to continue in the sport as an athlete.

On motion, counsel submits a letter from the head coach of the United States Men's Bobsled Team. According to the coach, the petitioner is "one of two pilots . . . at the world level in the United States." Although the letter states that the petitioner "participated" with the United States Men's Bobsled Team during the past season, the coach does not say the petitioner is a member of the team.

Nonetheless, this letter only serves to help the petitioner towards meeting one prong of the test established by statute to receive visa preference as an athlete of extraordinary ability, that he must continue to work in his area of expertise. 8 U.S.C. § 203(b)(1)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(a). Counsel submits no additional evidence to overcome the AAO's determination that the petitioner had not established he possessed extraordinary ability in the field of athletics as evidenced by sustained national or international acclaim. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of February 25, 2003 is affirmed. The petition is denied.