



U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File [Redacted] Office: Nebraska Service Center

Date: **DEC 19 2001**

IN RE: Petitioner: [Redacted]
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]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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

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(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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a baseball player. 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). Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Therefore, simply playing in the major leagues is an insufficient one-time achievement. Barring a major one-time achievement, 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 which, he claims, meets the following criteria.

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.

Counsel asserts that the petitioner meets this criterion by playing on a major league baseball team, the Cleveland Indians, and due to his membership in the Major League Players Association. Counsel asserts that since not all baseball players are talented enough to play in the Major Leagues, the Major League Players Association requires outstanding achievements of its members.

A sports team is not an association. However, membership on a national team, especially an All-Star team, can be considered comparable evidence under 8 C.F.R. 204.5(h)(4). It is acknowledged that the Cleveland Indians are a very successful baseball franchise, having won four division Championships and appeared in the World Series twice in the last decade. Even if we were to concede, however, that the petitioner meets this criterion, it is simply one 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.

While the petitioner does not claim to meet this criterion, the record contains evidence which appears to relate to it. The record contains a press release from the Cleveland Indians announcing the acquisition of the petitioner. A press release from the petitioner's employer, which may never have been published, is not evidence of national or international acclaim. The record also contains internet stories regarding the petitioner's acquisition by the Indians, his contract with the Indians, and his recovery from his elbow injury posted by the Akron Beacon Journal, a local newspaper. A local story is not evidence of national or international acclaim.

The petitioner also submitted articles published in *La Aficion*, *El Mundo*, *Noroeste*, *Diario El Mundo*, and unidentified Spanish-language publications. The petitioner is currently a baseball player in the United States. In order to demonstrate sustained national acclaim, he must demonstrate national acclaim in the United States, where he plays. In addition, it is insufficient to

demonstrate that the petitioner is well-known in one community of the United States (such as the Spanish-speaking community), he must demonstrate national acclaim in general.

The petitioner submits one English-language newspaper article from an unidentified paper. The article, however is about one no-hitter Pittsburgh Pirates game for which the petitioner pitched the 10th inning only. The article states, "Cordova did not get the win – Rincon did. But Cordova will get credit for the masterful performance." As the article is not primarily about the petitioner, but a game in which he pitched, it cannot serve to meet this criterion.

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

Counsel asserts that the petitioner meets this criterion because he has appeared in hundreds of games in Mexico and the United States which "showcased" his "work." This criterion applies to *artistic* exhibitions or showcases, and is not applicable to athletes. As all sports players, even non-Major League players, play in front of fans, we do not consider the petitioner's appearance on the field as comparable evidence of national or international acclaim to meet this criterion under 8 C.F.R. 204.5(h)(4).

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

The director conceded that the petitioner met this criterion. We do not concur. While the Cleveland Indians clearly have a distinguished reputation, it is not clear that the petitioner plays a leading or critical role for the team. Counsel asserts that the petitioner meets this criterion as he is the only left handed pitcher to throw side-arm on the Cleveland Indians. John Hart, Executive Vice President and General Manager of the Cleveland Indians, writes:

A left-handed pitcher of [the petitioner's] caliber is crucial to an effective team and an important part of a well rounded bullpen. [The petitioner] is an important member of our team, a team which is categorized among the best in the country.

Bartolo Colon, a starting pitcher for the Indians, writes:

[The petitioner's] role as a left-handed pitcher is critical for the success of the team as a whole because without him it is more difficult to go against left handed batters which would negatively affect the game.

... His contribution to the game and to the success of the Cleveland Indians cannot be questioned.

Mr. Colon, while stating that the petitioner is "one of the best left-handed pitchers in the game," also states, "a Pitcher of his ability has no where to go but up and continue to succeed." Thus, Mr. Colon implies that the petitioner has yet to reach the pinnacle of his field.

Einar Diaz, a catcher for the Indians, also asserts that the petitioner is “a key member of our team,” who is “very important to the Cleveland Indians and our bullpen.”

Enrique Wilson, an infielder for the Indians, writes:

[The petitioner] is one of the best in his field. In 1999 [the petitioner] spent the season with the Indians without allowing a run over his six relief outings. In this season, he has limited major league hitters to a .214 average against him. In his major league career he holds a record of 4-10 with 18 saves and a 2.07 ERA in 128 major league relief appearances. As a left handed pitcher he owns a career average of .181 which is outstanding and impressive. He is an excellent player and an outstanding left-handed pitcher. He is a key member of our bull-pen and contributes to the success of our team.

Cleveland Indian Manny Ramirez, award winner and All-Star player, echoes the sentiments quoted above, asserting that the petitioner’s pitching “is extraordinary not only against left-handed batters but also against right-handed batters.”

While the opinions of teammates are not insignificant, they are not supported by the record. The petitioner submitted his statistics as reported on the Sports Illustrated website as of July 19, 2000. Those statistics reveal that the petitioner pitched 44.2 innings in 59 games in 1999 and 9.1 innings in 16 games in 2000 as of July 19th. The petitioner was credited with four wins, three losses, and no saves¹ during his year and a half with the Indians. In 2000 the petitioner was credited with five holds.² His holds for 1999 are not reflected in the record. A relief pitcher who, at the time of filing, has been credited with few wins or holds and no saves for his current team simply cannot be considered to have played a leading or critical role for that team. See *Russell v. INS*, Case No. 98 C 6132, note 6, (N.D. Illinois Jan. 4, 2001) for the general proposition that a petitioner may be compared with other players in his position, including those on other teams, for this criterion.

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

Counsel asserts that the average salary for pitchers in the Major League is \$250,000 per year. This alleged average salary is not documented in the record. The petitioner’s salary with the Cleveland Indians was \$450,000 in 1999 and \$800,000 in 2000 with the potential of reaching \$1.4 million

¹ A “save” is defined as a game where the pitcher finishes the game won by his team, is not credited with the “win,” and either enters the game with a lead of no more than three runs and pitches at least one inning, enters the game with the tying run either on base, at bat, or on deck, or pitches effectively for at least three innings. Baseball-almanac.com/stats2.shtml.

² A “hold” is defined as a game where the pitcher preserves the lead by not allowing any runs (earned or unearned) and passes it on to another pitcher for a save opportunity. There does not appear to be a minimum number of batters a pitcher must face to be awarded a “hold.” Baseball-almanac.com/stats2.shtml.

depending on how many championship games the petitioner finished. In order to demonstrate that a petitioner is one of the very few at the top of his field, he must demonstrate that his salary is high when compared with other highly paid pitchers, not merely higher than the average salary for a pitcher. The petitioner provided no evidence of the range of salaries for pitchers in the Major League, including the highest salaries.³

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

Finally, counsel asserts that the petitioner meets this criterion due to the commercial success of the Cleveland Indians. Once again, this criterion is not applicable to athletes, but performing artists. It is not clear that the commercial success of a sports team is comparable to the commercial success of a performing artist, group or troupe, where the commercial success is easily attributable to the artist or, in some cases, the individual members of the group or troupe. Even if we were to consider counsel's claim as comparable to this criterion under 8 C.F.R. 204.5(h)(4), the record does not support counsel's claim.

On appeal, counsel asserts:

The teams [sic] commercial success is due to the collective efforts of the [sic] all of the players, of which [the petitioner] is one, and the management. Its commercial success is not due to any one player or staff member. It cannot be for the Indians are a team and put in a team effort. A testament to the success of their work as such is the fact that its games have been sold out for the past four seasons in a row.

A petitioner must meet every criterion on his own based on his own alleged national or international acclaim. If true, counsel's assertions reveal that the Cleveland Indians already sold out their games prior to acquiring the petitioner as a relief pitcher. A Major League team includes approximately 40 players. We do not find it credible that every player listed on the team's roster is as much responsible for the commercial success of the team as the All-Star team members and other well-known players who make up the starting line-up.

The petitioner has not demonstrated that a relief pitcher such as himself is responsible for the commercial success of a Major League team with an established history and a well-known starting line-up. For example, the petitioner has not demonstrated that attendance at Indians games increased after he joined the team or dropped off during his absence for an elbow injury.

³ A very cursory review of the internet revealed that the Yankees signed Mike Stanton, another relief pitcher, to a three year contract worth \$5.45 million. Home.epix.net/~fwfson/ynews.html.

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 baseball player 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 immense talent as a baseball player, but is not persuasive that the petitioner's 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.