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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: SRC 99 012 51672 Office: Texas Service Center Date: JUN 6 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)

Public Copy

IN BEHALF OF PETITIONER:

[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 as a horse trainer. 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 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 horse trainer specializing in dressage. 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 did not initially specify which of the criteria he purports to have met, but the evidence in the initial filing conforms most closely to 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 record demonstrates that the petitioner has won significant equestrian awards, such as the South African National Equestrian Federation's ("SANEF") National Gold Medal which, according to SANEF judge June Heslop, "is awarded to an outstanding horse and rider who achieves the greatest honor possible in the Republic of South Africa." The petitioner also won a silver medal the same year. The petitioner won these medals in 1993, at the age of 17, as a horse rider rather than as a horse trainer. A prize which the petitioner won before he was a trainer cannot establish his acclaim or ability as a trainer.

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 record contains copies of several newspaper articles regarding the petitioner's achievements as a rider. There is no indication that the petitioner's work as a trainer has attracted similar coverage. Furthermore, the articles appear to be from local rather than national media. For example, one headline reads "Local rider is Reserve Champion," indicating that the intended readers of the paper are concentrated in the area that would consider the petitioner to be a local rider.

The articles are dated 1992 and 1993. There is no evidence in the record that the petitioner has been the subject of any significant media attention during the five years between 1993 and the petition's filing date in October 1998. A brief period of local media coverage does not establish sustained acclaim at the national or international level.

Beyond the above evidence, the bulk of the initial submission consists of letters from various witnesses. SANEF judge June Heslop states that the petitioner "was a great student and has made a very fine instructor." Lidia Amini, who won a gold medal in dressage at a 1985 event in which the petitioner also competed,

asserts that the petitioner "has the ability to compete with the best in the equestrian field. . . . I am also certain that [the petitioner] is perfecting his ability as a trainer. That the riders he will produce will be far superior than other U.S. riders." Ms. Amini offers no comment regarding riders whom the petitioner has already trained, and upon whom his existing reputation as a trainer must rest.

Georgia State Senator Thomas E. Price states that the petitioner "achieved the highest level of recognition as a horse rider in his country when he won the Gold Medal and the Silver Medal in the South African Equestrian Championships." Sen. Price does not indicate that the petitioner has achieved a comparable level of recognition as a trainer.

Several of the petitioner's students offer letters of support, stating that the petitioner is an excellent trainer. While these opinions are surely sincere ones, customer satisfaction does not amount to sustained national or international acclaim, nor does it show that the petitioner has risen to the top of the field of horse training. There is no indication in these letters that the petitioner's students have tended to be more successful in competition than the students of other trainers. If the petitioner trains purely recreational riders, rather than for competition, then it is not clear how he could earn significant acclaim as a trainer.

Other letters describe the petitioner's volunteer work with underprivileged children and disabled riders through the Salvation Army in Atlanta. While such volunteer work is praiseworthy, there is no indication that it has earned him any attention outside of the Atlanta area.

The director instructed the petitioner to submit further evidence of the petitioner's acclaim as a horse trainer, including published articles and documentation regarding the competitive performance of his students.

In response, counsel asserts that the petitioner "has not achieved any ranking internationally or nationally as a horse trainer. [The petitioner's] extraordinary ability as a horse rider will be used to train young riders here in the United States to compete on a national level and hopefully on an international level."

The director had also specifically requested evidence from sources other than the petitioner's clients to attest to the petitioner's claimed extraordinary ability. In response to this request, counsel again points to the aforementioned gold medals which predate the petitioner's involvement in horse training.

Counsel notes that two of the petitioner's students "were awarded the gold medal for their respective performances at the Georgia State Games" which took place "just recently during the weekend of July 23rd-24th, 1999." The petition was filed in October 1998, the better part of a year before this competition took place.

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. 8 C.F.R. 103.2(b)(12). In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Accomplishments in July 1999 cannot retroactively establish that the petitioner was already eligible in October 1998.

Furthermore, the Georgia State Games is a statewide rather than national or international event. There is no evidence that the petitioner's students have enjoyed inordinate success outside of Georgia.

Counsel states that the petitioner's students "have ambitions to compete internationally by one day riding for the U.S. Olympic Team." Ambitions and aspirations for future achievement do not translate into present acclaim and recognition. If one of his students does one day win an Olympic medal, it would certainly reflect well on the petitioner's abilities as a trainer. But it is absurd to claim that the petitioner must already be nationally known because his students would like to win such medals in a future Olympiad. Most if not all competitive riders harbor hopes of great achievement.

The petitioner submits letters from the parents of the two medal winners discussed above. These letters, like the letters submitted with the initial petition, show that the petitioner is admired and respected by his clients, but they do not objectively establish that the petitioner is among the best-known and most highly acclaimed horse trainers in the United States.

The director denied the petition, stating that the record contains "little evidence" of the petitioner's extraordinary ability as a horse trainer. The director noted that the petitioner's medals represent, judging from their inscriptions, "junior championships." The director also noted counsel's acknowledgement that the petitioner "has not achieved any ranking internationally or nationally as a horse trainer."

On appeal, counsel contends that the director "did not articulate valid reasons" to support the denial of the petition. Counsel asserts that the director arbitrarily dismissed the petitioner's

gold and silver medals "even though that was the highest possible national award available for the Appellant's group." There is some merit to this observation, although we must also note that "junior competitor" is not a distinct field of endeavor. The petitioner would still need to show other evidence that places him at the top of his overall field, rather than his narrow age division. The gold and silver medals which the petitioner won are national rather than international awards, and therefore cannot suffice to establish eligibility; other evidence of acclaim is also necessary.

The above-cited regulations plainly require satisfaction of at least three of the ten specified criteria for sustained acclaim. The petitioner, in his submissions prior to the denial, had not explained which of these criteria he purports to have met, and only two of the criteria self-evidently apply to the petitioner's evidence - the criteria pertaining to awards and to media coverage. The remaining evidence establishes little except that the petitioner is a competent trainer who serves a number of satisfied customers in Georgia.

Counsel asserts on appeal that the petitioner's work satisfies the following regulatory criterion:

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

Allowing a liberal definition of "artistic exhibitions" to include horse shows, we note that every horse trainer who specializes in dressage would appear to display his or her work in this manner. The very fact that horses trained by the petitioner have appeared in horse shows cannot satisfy this criterion. We must also keep in mind that the petition must have been approvable as of the filing date. The petitioner has not established that, as a trainer, he had shown horses at a national or international level as of the petition's filing date; he had only reached the statewide level as of July 1999.

As we have already discussed, the petitioner's awards and news coverage relate to his work as a rider. The petitioner was not a horse trainer yet in 1992 or 1993, and therefore no evidence from that time period can establish that the petitioner is an extraordinary horse trainer. Counsel argues:

The Director comments in his Decision that Respondent has not achieved any ranking internationally or nationally as a horse trainer. However, Respondent's documented extraordinary ability is as a horse rider and he intends to substantially contribute to the U.S. community by continuing to ride in productions and exhibitions as well as to share his equestrian excellence through the training of other riders to compete on a national and international level. Respondent has received

and continues to receive offers from top equestrian productions to participate by showcasing his extraordinary abilities as a rider.

Counsel here cites a letter from White Stallion Productions, Inc., indicating that the company is "very interested in having [the petitioner] join our international touring show . . . as a Dressage Rider in our production of the 'World Famous' Lipizzaner Stallions." This letter, the only documented job offer in the record, is dated September 1, 1999, well after the director had informed the petitioner that the initial filing was insufficient.

In Part 6 of the Form I-140 petition, the petitioner identified his "Job Title" as "horse trainer." Under "Description of job," the petitioner indicated "I train both the horse and rider in the English riding method to compete in equestrian sporting events." The petitioner did not mention any intention of riding himself, nor did any of the initially submitted documents indicate such an intent. In a letter dated July 25, 1999, the petitioner detailed his past achievements and future plans as a trainer but did not state that he intended to continue competing himself.

Only on appeal does the petitioner (through counsel) express any intent to continue riding. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumi, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and Matter of Katigbak, *supra*. Thus, we cannot conclude that, at the time he filed the petition, the petitioner intended to continue working as a rider. 8 C.F.R. 204.5(h)(5) reflects the statutory requirement at section 203(b)(1)(A)(ii) of the Act that the alien seeking classification as an alien of extraordinary ability must enter the U.S. to continue working in the area of extraordinary ability. While riding and training are certainly related fields of expertise, they are not identical, and an accomplished rider who seeks to work primarily or exclusively as a trainer is not working in the same area of ability.

Even then, as we have observed, the petitioner's acclaim as a rider appears to have ceased in 1993; the petitioner has submitted no medals, news articles, or any other evidence to show that the petitioner was at the top of his field as a rider after that time. Therefore, we cannot conclude that whatever acclaim the petitioner may have earned was sustained.

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a dressage 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 petitioner may have briefly attained national acclaim as a dressage rider five to six years before he filed the petition, but he has not sustained this acclaim. The petitioner's new claim on appeal that he intends to continue riding as well as training is not persuasive, nor is the assertion that his past success as a rider demonstrates that he will eventually become an acclaimed trainer. The evidence indicates that the petitioner shows talent as a trainer, 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.