



BA

U.S. Department of Justice
Immigration and Naturalization Service

Deleting data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

[Redacted]

File: [Redacted]

Office: Texas Service Center

Date:

AUG 11 2002

IN RE: Petitioner:
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 that 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 that 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 that 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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

We note that the petitioner simultaneously filed both an appeal and a motion to reconsider. Upon the petitioner's motion, the director issued a second decision denying the petition. In that second decision, the director indicated that the matter would be certified to the Associate Commissioner for review. In effect, appellate review of the certified denial is essentially equivalent to appellate review of the appeal filed at the same time as the motion.

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 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 the beneficiary has sustained national or international acclaim at the very top level.

The petitioner, a member university of the National Collegiate Athletic Association (“NCAA”), seeks to employ the beneficiary as an assistant track and field coach. [REDACTED], head coach of the petitioner’s track and field team, states in an introductory letter:

[The petitioner] has fielded track teams which have reigned repeatedly as NCAA champion for over a decade.

In his career as a college athlete [the beneficiary] demonstrated himself to be of world class caliber. As coach at [the petitioning university], he has continued to operate on the very highest level of our profession successfully inculcating his extraordinary skills to our students both athletically and academically.

[REDACTED] asserts that there is a “genuine need for [the beneficiary’s] service as an Assistant Track and Field coach.” In a subsequent letter, [REDACTED] has discussed in detail the traits that a coach needs to be successful, and explained that the beneficiary possesses each of these traits. Need for the beneficiary’s services is not a factor in determining eligibility for classification as an alien of extraordinary ability, nor is the beneficiary’s eligibility for an assistant coach position with the petitioning university. If the beneficiary has not achieved sustained national or international acclaim, he does not qualify for the classification sought, regardless of the university’s need for his services or other factors disconnected from the issue of 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 has submitted evidence which purports 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 beneficiary’s capsule biography indicates that the beneficiary “was a four-time NCAA All-America[n] while competing for [the petitioning university]. He was a member of four consecutive national outdoor championship teams.” The biography also indicates that, as a coach, the beneficiary “has served with eight national champion women’s teams – four indoor, four outdoor,” while coaching athletes who have competed in national and international events including the Olympic Games. This biography does not constitute documentation of the beneficiary’s receipt of prizes.

The record contains five certificates relating to the beneficiary’s athletic performance. The fifth certificate is a “Certificate of Scholastic Achievement” showing that the beneficiary earned a grade point average of at least 3.0 in the spring 1991 semester. The only certificate that specifies the petitioner’s performance in a competition is a certificate from the All-American Board of the NCAA Division I Track and Field Coaches’ Association, indicating that the beneficiary placed

6th in the 5000 meter event on the 1989 All-American track and field team. Another certificate from the same body indicates that the beneficiary participated in the 3000 meter indoor event, also as part of the 1989 All-American team. This latter certificate does not indicate how the beneficiary placed in the 3000 meter event. A certificate from the Southeastern Conference confirms the beneficiary's membership on the 1989 All-SEC team, and a certificate from the Louisiana Sports Writers Association states that the beneficiary was a member of the 1990 All-Louisiana collegiate men's track and field team.

Regarding athletes coached by the beneficiary, the record contains magazine and newspaper articles (discussed in greater depth below) ranking the athletes who competed in various track events. Apart from the lack of direct evidence that the beneficiary in fact coached these runners, the articles do not indicate what prizes, if any, the runners have won. Documentation of, for instance, a fourth-place finish does not imply that a nationally-recognized prize accompanies that ranking. Participating in a race is not a national or international award.

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.

██████████ has stated that the beneficiary has belonged to qualifying associations, but he has not specified what those associations are. ██████████ may have been referring to the beneficiary's memberships on All-Louisiana, All-SEC, and All-American teams. While such teams are not associations as such, membership in a national-level team can qualify as comparable evidence pursuant to 8 C.F.R. 204.5(h)(4), provided that prospective members of the team are chosen from a truly national pool, and compete for places in a manner that demonstrates that the best athletes are selected for the team. The All-American team appears to be national in character; the All-Louisiana and All-SEC teams are local or regional.

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.

██████████ asserts "[t]here exists published material about [the beneficiary] and his accomplishments both as an athlete and a coach." Regarding the beneficiary, the record contains a copy of *TAFWA All-Time Indoor List 1994*, published by Mobil. A page headed "5000 Meters" lists a series of names, times, and other statistics. The beneficiary's name appears at the bottom of the page, indicating a time of 13:43.34 to finish second at a 1990 race in Gainesville. The entire book appears to be composed of such lists, with nothing to single out the beneficiary from the hundreds of other competitors listed. We cannot conclude that a reference guide is published material about the beneficiary simply because the beneficiary is among the many names listed.

The July 1989 edition of *Track & Field News* contains a one-page article indicating that the petitioner “has become the first school to win the men’s and women’s NCAA team titles in the same year.” The article contains several paragraphs about women’s coach Loren Seagrave, and a single sentence about the beneficiary (reporting his 6th place finish in the 5000 meter event). Numerous other athletes received single-sentence coverage, but the article began and ended with more extended discussion of [REDACTED]. The same issue of the magazine mentions the beneficiary in the context of the 5000 meter event. The April 1989 issue of the magazine contains a list of statistics regarding a 3000 meter event, and thus reports the beneficiary’s second-place finish along with every other competitor’s ranking in a number of events at the same meet.

Of the articles about other athletes coached by the beneficiary, most are lists of statistics which do not mention the beneficiary at all; the petitioner has merely highlighted the names of those athletes whom the beneficiary had coached. These articles appeared, for the most part, in *Track & Field News*. One article that actually does mention the beneficiary (in two sentences of an article about Charlotte Mayock) is from *Gameday*, published by the petitioner. There is no indication as to how widely *Gameday* circulates outside of the petitioner’s students, faculty and alumni.

Almost all of the above published material is in the form of results from various competitions. The petitioner has not shown that it is unusual for such results to be published. If publication of scores and results is routine (as it appears to be), then the inclusion of the beneficiary’s name, or the names of those he coaches, in such materials does not elevate the beneficiary to the very top of collegiate athletes or collegiate coaches.

A series of articles report the petitioner’s multiple NCAA women’s outdoor track and field championships. These articles do not mention the beneficiary. The petitioner’s team began a streak of championships in the mid-1980s, before the beneficiary was a coach at the petitioning institution, indicating that the beneficiary is not responsible for any major improvement in the team’s performance.

Beyond the above criteria, the petitioner has submitted several witness letters, mostly from coaches in the southeastern United States. These letters offer general praise for the beneficiary’s personal character, as well as his abilities both as an athlete and as a coach, but they do not establish that the beneficiary has earned a lasting nationwide reputation as one of the very best coaches in his field.

The director denied the petition, stating that the petitioner has not shown that the beneficiary has reached the very top of his field. The director stated “[t]he petitioner has fully satisfied #1 of the criteria.” It is not clear whether this refers to the first of the ten criteria at 8 C.F.R. 204.5(h)(3) (lesser national or international prizes), or simply one unspecified criterion out of the ten listed. The petitioner filed an appeal and a motion to reopen. Each of these filings contained similar briefs in which counsel argues that the beneficiary’s “membership in the United States Track Coaches Association satisfies the requirement regarding membership in associations in the field.” Documentation of this membership accompanies the appeal. Leaving aside the petitioner’s failure even to mention, let alone document, that membership in the initial submission, the record

contains no evidence that the United States Track Coaches Association requires outstanding achievement as a condition of membership.

The petitioner submits further copies of the published material discussed above, and counsel argues on appeal that this material satisfies another criterion. As we have already stated, the beneficiary's name does not even appear in the majority of these articles, and in those where it does appear, he merits only the briefest of mentions. The petitioner has not shown that the beneficiary has reached a level of media coverage attained only by an extremely small number of track coaches.

Counsel asserts that, because many of the ten regulatory criteria do not apply to the beneficiary's occupation, the petitioner may submit comparable evidence pursuant to 8 C.F.R. 204.5(h)(4). Such evidence, however, must still be compatible with the definition of "extraordinary ability" set forth at 8 C.F.R. 204.5(h)(2), i.e. "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." The evidence must also demonstrate sustained national or international acclaim. In this instance, the "comparable evidence" consists of letters from coaches in Texas, Louisiana, Florida and Alabama, who watched the beneficiary in action at regional meets and who are impressed with his talent and dedication. The letters do not demonstrate or imply that the beneficiary has earned sustained acclaim outside of the states bordering the Gulf of Mexico.

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 beneficiary has distinguished himself as an athlete or as a coach 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 is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. 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.