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**U.S. Department of Justice**

**Immigration and Naturalization Service**

**Identifying data deleted to  
ent clearly unwarranted  
invasion of personal privacy**

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



File: EAC-01-193-54602

Office: Vermont Service Center

Date: DEC 10 2002

IN RE: Petitioner:  
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)

IN BEHALF OF PETITIONER:



**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

*for Elizabeth Hayward*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations summarily dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted. The decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

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 established that he qualifies as an alien of extraordinary ability in his field of endeavor, but determined that the petitioner had not established that he would work in his field of endeavor.

On appeal, filed February 28, 2002, counsel requested an additional 30 days in which to support the record. On August 30, 2002, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, summarily dismissed the appeal, concluding that no additional materials had been submitted.

On motion, counsel provides evidence that additional materials were submitted to this office on March 25, 2002. The petitioner resubmits those materials. In light of this information, we will reopen the matter and adjudicate the appeal on its merits.

Ultimately, counsel asserts that the director failed to consider the endorsement the petitioner received to run marathons.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an ultramarathon runner.

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. The director did not contest that the petitioner has in fact met three of the necessary criteria, and we concur.

The remaining issue is whether the petitioner intends to support himself as a marathon runner or simply runs for recreation. Initially, the petitioner submitted evidence that he had won or placed in the top three finalists in several races, including setting two world records. The petitioner, however, failed to submit evidence that he had earned any prize money for these races. In response to the director’s request for additional documentation on this issue, the petitioner submitted a letter from the Chief Editor of *Sportivniy Mir*, a Russian-American publication, asserting that they had agreed to pay the petitioner \$750 per day per running event to wear their logo and that they expected to pay the petitioner between \$22,500 and \$30,000 per year. The petitioner also submitted evidence of an international race in Australia with significant prize money and a letter from the president of Palanga Health and Fitness School in Lithuania asserting that the petitioner was a founding partner of the school and, as such, received a “steady income” from dividends.

The director noted that the petitioner had not responded with evidence of prize money previously won, determined that the money from the school in Lithuania was not from work in the United States, further determined that the petitioner would not earn money in the United States by racing in Australia and questioned why the Russian publication had not previously sponsored the petitioner. Thus, the director concluded that the petitioner would not “enter the United States work force in the way the statute at section 203(b) of the Act appears to contemplate.”

On appeal, counsel argues that the income from the school in Lithuania demonstrates that the petitioner gets paid for his running expertise. In addition, counsel argues that the director wrongly dismissed evidence of an endorsement and that *Sportivniy Mir* had only recently decided to sponsor

an athlete. The petitioner submits the board minutes where the decision was made to support an athlete. Finally, the petitioner submits a letter from Sri Chinmoy, the sponsor of many multi-day marathons, asserting that the petitioner does receive prize money as well as the petitioner's 2001 tax return reflecting \$2,000 in prizes and awards.

We concur with some of the director's concerns. Specifically, not only is the income from the school in Lithuania not U.S. income, it is not income he receives from running, his claimed area of expertise. Were the petitioner intending to run a fitness school in the United States, he would not be eligible under the classification sought since running a business is outside his claimed area of expertise, running marathons. In addition, employment-based visa petitions contemplate work in the United States. We are not convinced that an intention to run races in Australia fulfills the intent of an employment-based visa petition. Nevertheless, we concur with counsel that the sponsorship of the petitioner by a U.S. based publication to run races in the United States is sufficient. The income projected by the publication is sufficient to indicate that the petitioner is able to make a living from his area of expertise, running marathons.

The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

**ORDER:** The decision of August 30, 2002 is withdrawn, and the petition is approved.