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U.S. Department of Justice

Immigration and Naturalization Service

Identifying 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



File: [Redacted] Office: California Service Center Date: 25 FEB 2002

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 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 initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on February 13, 2001. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

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 acclaim necessary to qualify for that classification.

On appeal, counsel contends that the director did not have good and sufficient cause to revoke the approval of the petition.

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).

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 petitioner is a hockey player with the National Hockey League. He contends that his past record as a hockey player establishes the necessary sustained acclaim.

The regulation at 8 C.F.R. 204.5(h)(3) states, in pertinent part:

A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award) or at least three of [ten stated lesser criteria].

The petitioner asserts that he won a gold medal as a member of the United Team (representing the former Soviet republics) at the 1992 Winter Olympics in Albertville, France. As counsel notes, it is difficult to imagine a more prestigious or universally-recognized award for a hockey player than an Olympic gold medal. We find that such a medal represents a major, international recognized award, sufficient to establish the one-time achievement described in 8 C.F.R. 204.5(h)(3).

We note that the director's notice of intent to revoke was based on the lack of evidence to support the petitioner's Olympic medal claim. In response to that notice, the petitioner did not submit direct, first-hand documentation such as a letter or certificate from the International Olympic Committee, but he produced a variety of indirect evidence (such as newspaper articles that refer to the medal) to support the claim. While individually these exhibits do not carry nearly as much weight as first-hand, direct documentation from the awarding authority itself, these exhibits nevertheless, in the aggregate, demonstrate general acceptance that the petitioner did in fact win the medal. In short, the preponderance of credible evidence (from sources not directly connected with the petitioner) supports the claim. Obviously, if evidence surfaced to contradict the petitioner's medal claim, then the director would be amply justified in rejecting an attempt to gain a benefit by fraud, but there is no indication that such is the case here.

In the notice of revocation, the director did not question whether the petitioner had received the medal. The director appears to acknowledge the petitioner's receipt of the medal with the assertion that "the awards received by the petitioner as a team participant with Team Russia in 1992 and 1993 were indeed praiseworthy." Thus, the issues raised in the notice of intent do not match the grounds for revocation stated in the final notice. To this extent, the director did not afford the petitioner an opportunity to rebut the grounds stated in the final notice of revocation.

We acknowledge the director's concern that the petitioner's overall record, such as his post-Olympic career, is not demonstrative of

extraordinary ability. Nevertheless, the structure of the regulations indicates that a one-time achievement in the form of a major international award is entirely sufficient to establish eligibility. Whether or not the remainder of the record would support a claim of extraordinary ability without the gold medal, the gold medal is a factor in this instance and we cannot disregard the pertinent regulations with regard to prizes of that magnitude.

By nature, a one-time achievement is not, itself, "sustained," but a major prize such as an Olympic medal, an Academy Award, or a Nobel prize nevertheless places its recipients on a rarefied level and secures some degree of permanent recognition in the annals of the particular field of endeavor. Furthermore, the number of qualifying one-time awards, and thus the number of recipients of those awards, is exceedingly small and thus, it would seem, the one-time achievement clause can only rarely be invoked with any justification.

It is significant that the petitioner, according to the record, remains active as an athlete, playing hockey at a national level as a competitive athlete in the sport for which he received the gold medal. Because 8 C.F.R. 204.5(h)(5) requires evidence that the petitioner must continue to work in the area of claimed extraordinary ability, an Olympic medal does not guarantee approval in instances where the alien is no longer a competitive athlete (although it can, of course, be a heavily favorable factor, depending on other evidence in the particular record of proceeding).

The director initially approved the petition, based largely on the petitioner's claim of an Olympic gold medal. While the director, in the notice of intent to revoke, questioned the degree to which the petitioner had substantiated that claim, in the subsequent notice of revocation the director does not appear to contest the petitioner's receipt of the medal. Given that the director does not contest the petitioner's receipt of a one-time major international award in a sport in which the petitioner still competes as an athlete, there remains no defensible ground for the conclusion that the petitioner has not established sustained acclaim pursuant to the applicable regulations. We find, therefore, that the director erred in revoking the approval of the petition, and that to compound this error, the notice of intent and the notice of revocation appear to disagree on the grounds for revocation.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.