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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: JUL 18 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 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 business. 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.

Counsel, at one point, states that the petitioner qualifies for a national interest waiver of the job offer requirement. The waiver pertains to a different immigrant classification under a different section of the Act. If the petitioner wishes to be considered under a second classification, he must file a second visa petition rather than requesting multiple adjudications of a single petition with only one fee.

The petitioner invents, manufactures, sells and services recreational luge sleds. Counsel states that the petitioner "invented and manufactured a recreational luge sled that can be used on packed snow surface and is light enough to be carried on a ski lift," unlike other luge sleds manufactured abroad. 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, he claims, meets 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.*

Counsel states that the petitioner "has received 27 awards for being a national and international Olympic luge participant" between 1967 and 1984. We note that there is no evidence that the petitioner has participated in any Olympic games. Rather, he has competed in smaller "Olympic style" luge tournaments. These awards reflect the petitioner's athletic ability as a luge sledder. They do not demonstrate or imply that the petitioner has equal recognition as an inventor or manufacturer of luge sleds. Therefore, these awards are irrelevant to the petitioner's current work and do not merit further discussion.

*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 petitioner submits copies of several articles. The burden is on the petitioner to establish that the publications in which the articles appeared qualify as major media. An article from the Lloydminster (Alberta, Canada) *Daily Times* describes a local luge club, whose members "lack experience with the sport," taking lessons from the petitioner. A similar article in the *Meridian Booster* also describes the petitioner's work with the Lloydminster luge club. The record contains no evidence that either of these newspapers circulates outside the Lloydminster area.

The September 1996 issue of the trade publication *Ski Area Management* published a paragraph about the petitioner's sled, followed by the address and telephone number of the petitioner's company. This piece amounts to little more than a press release or promotional piece announcing the sled's existence. The article appears in a section headed "What's New," alongside similar descriptions of fencing, trail markers, and other equipment used in the ski resort trade. Another issue of *Ski Area Management* includes a directory of equipment vendors. The alphabetical directory includes the name, address and telephone number of the petitioner's company, along with the statement "We sell Luge rental concessions to ski resorts." The use of the pronoun "we" indicates that the petitioner, rather than a reporter, wrote the piece. Published advertisements and promotions do not represent media coverage. One need not be at the top of one's field to purchase advertising space or issue press releases.

The petitioner submits an article that he states is from the "Business" section of the *Denver Post*. The article indicates that the petitioner has begun offering lessons and renting sleds in Vail. The article states that the petitioner has "produced 100 sleds and sold half of his inventory" as of April 1998, and states that the price of the sleds should come down "[w]hen and if the [petitioner's] sleds go into mass production." The article also quotes the petitioner stating he has not "seen a dime" from his sled, and therefore "supports his fledgling company by installing drywall, painting homes and working as a carpenter." This assertion does not appear readily compatible with national acclaim as one who has reached the very top of his field in business.

The most extensive article about the petitioner is "For Love of Luge," a full-page article in the *Village Courant*, the masthead of which reads "serving the Cherry Hills and Greenwood Village communities." This is plainly a local community newsletter rather than major media. The October 1999 article states that the petitioner "is prepared to produce [the sleds] in three sizes at a cost [of] \$240, but the demand is still not there." The article also describes the petitioner's "uphill battle" to establish recreational luge sledding, adding that "his goal goes unrealized today."

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Counsel observes that the petitioner coached the Norwegian Luge Team at the 23<sup>rd</sup> European Luge Championship Olympic Style 1976, and acted as a training coach in March 1982. Counsel states: "[a]s a coach he was required the judge the work of the participants on his team and he was also to pick qualified sledders as participants in this international event." The same can be said of every coach; such "judging" is integral to coaching duties. The record does not show that the petitioner has actually acted in the capacity of a judge at a competition. Moreover, the petitioner claims extraordinary ability as a builder and seller of luge sleds. He does not claim to have formally judged the work of other luge manufacturers, and it is tenuous to assert that competitive luge sledding is a "related field" to luge manufacture. While both endeavors involve luge sleds, the similarity ends there. Manufacturing and sales are business ventures, wholly different from athletic competition.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Counsel states:

We submit that the drafting of the U.S. Utility Patent for the Luge Sled No. 5,509,665 serves as a[n] original, scientific, athletic or business related contribution of major significance in the field. The [petitioner's] Luge Sled is the only recreational Luge Sled patented and manufactured in the United States. It is therefore original, scientific, athletic or business related in the field of recreational luge sledding.

A U.S. Patent is evidence of the originality of the invention, but we cannot conclude that every patented invention is a contribution of major significance. The patent number cited by counsel demonstrates that there are millions of patented inventions in the United States, many of them incremental improvements on existing inventions. Similarly, the petitioner's luge sled is not necessarily significant by virtue of being the only luge sled manufactured in the United States. The petitioner has not shown that imported luge sleds represent a significant part of the trade deficit, or that the petitioner's work addresses a major, heretofore unaddressed demand for domestically produced luge sleds. Indeed, if no one else in the United States produces luge sleds (as counsel claims), there appears to be little justification for assuming such a demand exists.

Several witness letters accompany the petition. The petitioner submits a letter from [REDACTED] president of the International Luge Federation ("FIL," from the French initials). Counsel refers to this as an "Endorsement Letter." From its text, however, it is clear that the letter is not an endorsement of any kind. The body of the letter reads, in full:

Thank you for your letter concerning your endeavors for the luge sport.

I am sorry that I have not had a chance yet to see your sled, but I hope I will have that opportunity in the future. I am sure your extensive background in the luge is of great value in building a sled that will benefit the expansion of our sport.

As FIL President I am always pleased to see luge expansion efforts, however, the FIL as a governing body for luge does not provide endorsement letters to any sled manufacturers upon the advice of our legal team. With the stringent liability laws in the USA, a small organization such as ours cannot afford to place ourselves in a position as endorsers of luge equipment.

I hope you can understand our predicament and wish you the best of luck with your project.

Counsel does not offer any explanation as to how a letter from someone who has never seen the petitioner's product, and who expressly refuses to endorse it, can be considered an "endorsement letter" in any sense of the phrase. [REDACTED] vaguely complimentary reference to the petitioner's "extensive background in luge" can hardly be considered strong evidence of sustained acclaim.

John W. Rutter, senior vice president and chief operating officer of Keystone Resort in Keystone, Colorado, states that the petitioner's sled is "[a]n impressive product" that "can be of service to the ski resort industry." This is a vague statement of the sled's future potential, rather than evidence that the sled, or its inventor, has already become well-known.

[REDACTED] president of Reeves Engineering & Consulting, compares characteristics of the petitioner's luge sled to those of the standard Olympic luge sleds. Dr. Reeves observes that "[I]uge sledding . . . is considered a high risk sport and for all intent[s] and purposes is closed to any

amateur and (or) public participation.” [REDACTED] states that the petitioner’s lighter, more durable sled is safer to ride than an Olympic luge sled, and that the petitioner’s rental facility in Vail “had 24 rental sleds and operated at approximately 80 percent capacity,” indicating that a potential market exists for the sleds. Nevertheless, projections of future success are, by nature, speculative and conjectural [REDACTED] states that “the upside market potential for luge sledding is immense, but remains undeveloped.” The petitioner has chosen to seek an extremely restrictive immigrant classification, which requires evidence of sustained acclaim. The speculative assertion that the petitioner could have great success in the future cannot meet this threshold.

In a letter dated October 21, 1993, [REDACTED] director of the Colorado Small Business Development Center, states that the petitioner “was selected to participate in the Small Business Strategies Program in November, 1989.” [REDACTED] states that the petitioner’s “product . . . had tremendous market potential,” foreshadowing [REDACTED] comparable statement over seven years later.

Several letters, dating from the mid-1980s, thank the petitioner for providing training workshops, promotional brochures for his luge sled, and so on. This documentation indicates that the petitioner has been selling sleds in North America since at least 1984. One 1985 letter, from [REDACTED] personal assistant, [REDACTED] thanks the petitioner for “sending [REDACTED] the information on the luges you make. They do look interesting, but, I’m sorry to tell you, they don’t fit in with [REDACTED] plans for Sundance at this point.” Other resort owners express interest in learning more about the sleds. The organizers of luge competitions indicate that the petitioner’s sleds were used by many competitors. All in all, this evidence shows that the petitioner was actively promoting the sport of luge sledding during the mid-1980s. This evidence shows that, for nearly 20 years, some individuals have seen “market potential” in the petitioner’s luge sleds, with no clear indication of how much longer it will be before this “potential” comes to fruition.

The director denied the petition, stating that evidence pertaining to the petitioner’s success, decades ago, as a competitor and coach cannot show that the petitioner is currently acclaimed as a businessman. The director stated that the petitioner’s patent for his sled does not, by itself, establish the major significance of the invention, and made other observations regarding the evidence submitted in support of the petition.

On appeal, counsel states “[w]e are unable to discern . . . what facts the Service Center relied on making their denial.” The director’s decision contained several specific observations, such as the assertion that the *Denver Post* is a major newspaper but that the content of the article was not conducive to the conclusion that the petitioner is nationally acclaimed.

Counsel maintains that the director should have given greater weight to the success that the petitioner enjoyed from 1967 to 1984. Counsel then states that the petitioner “would love to coach or instruct but those opportunities and offers have not been forthcoming.” This assertion suggests that whatever acclaim the petitioner had once enjoyed in the field of luge competition has dissipated and therefore has not been sustained.

Counsel states that the director "wrongfully asserts that [the petitioner] did not come to this country as a coach or a judge, but rather as an inventor, manufacturer or entrepreneur." To support this assertion, counsel cites new evidence pertaining to the petitioner's activities in Canada (which is irrelevant to the petitioner's work in the United States) and documentation that the petitioner "was an Instructor at the United States Olympic Team Training Center in Marquette Michigan for 1984 and 1985." While this evidence shows that the petitioner was active in luge training in 1984 and 1985, the petitioner has already submitted documentation showing that the petitioner was already attempting to sell sleds at that time. A letter dated January 30, 1985, addressed to the petitioner in Colorado, contains a request for "15-20 catalogues or brochures for your sleds." This evidence severely undermines counsel's contention that the petitioner did not seek to sell sleds when he entered the United States in 1984.

Regardless of the petitioner's intentions at the time he entered the U.S., the petitioner described himself as an inventor and manufacturer of luge sleds on his petition form. Since the mid-1980s, the petitioner has been an entrepreneur, and not an athlete or a coach. There is no rational basis for considering this petition based on the petitioner's past career as an athlete and coach, rather than on the work that has occupied the bulk of the petitioner's efforts since 1984.

Counsel states that to ignore the petitioner's competitive career "is contrary to the way the world works," because the petitioner's competitive experience is "not so unrelated to his endeavors" of late. Counsel, in effect, asserts that the Service is being unrealistic by noting the petitioner's palpable lack of success as a businessman. Despite all the optimistic statements of the "market potential" of the petitioner's recreational luge sled, the petitioner's own evidence demonstrates that the petitioner's impact has been minimal.

Counsel maintains that the petitioner's patent is a major contribution, and "no one else in the United States but the Petitioner can make a device in the patent a Luge [sic] for the next 20 years." Leaving aside that the term of the petitioner's U.S. patent is 14 years (seven and a half of which had elapsed before the appeal was filed), the petitioner has not shown that his patent blocks the creation of any other luge sled in the United States. The petitioner does not hold a patent on the fundamental concept of the luge sled, but rather on the specific properties of the type of sled he invented. Also, as the holder of the sole U.S. luge sled patent, the petitioner would have the opportunity to license his sled or sell it himself without competition. Even with this effective monopoly, however, the petitioner's enterprise has not grown into a major business. Inquiries from interested parties do not establish that the petitioner is already among the nation's best-known business figures.

Counsel also maintains that the petitioner has satisfied the letter of the regulation concerning published articles, and the director has no discretion to impose a stricter reading of that regulation. The Service cannot, however, ignore the content of the published material. When the petitioner submits published material that flatly states that he has had minimal success as a businessman, that his goal remains unrealized, and that as a result he has had to install drywall to pay his expenses, then we cannot reasonably conclude that these articles establish the petitioner's extraordinary ability or place him at the top of his field.

Counsel argues that the regulations do not require evidence of "significant commercial success" because that phrase does not appear in the regulations. We would add that the regulations do not contain the word "patent" either, despite the tremendous weight counsel attempts to attach to the petitioner's patent. The regulations demand evidence of sustained national or international acclaim that places the petitioner at the very top of his field of endeavor. The record shows that the petitioner has tried for years to sell and rent his products, and that his achievements to that end have been modest. For example, the *Denver Post* indicates that the petitioner had sold 50 sleds. As we have already stated, we cannot ignore the evidence that shows that the petitioner's business success has been minimal.

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 luge inventor, manufacturer or salesman 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 petitioner'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.