



B2

U.S. Department of Justice

Immigration and Naturalization Service

106. Copying 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: WAC 00 229 54137

Office: California Service Center

Date: JUL 22 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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, reopened on the petitioner's motion, and denied again by the director. The matter 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 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 she 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 middle distance runner, competing in 800 meter (800m) and 1,500 meter (1,500m) races. 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. Neither the petitioner nor counsel has ever specified which of the criteria the petitioner purports to have satisfied. Counsel's assertions, and the petitioner's evidence, appear to be intended to satisfy the following regulatory 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 "[i]n 1996, [the petitioner] placed second in the 1,500m at the *European Cup* and took fourth in the 800m at the *World Junior Championships*, and *won first place in the 800m and 1,500m at the Polish Championships* and altogether, has *won eleven Polish championships and twenty-one metals [sic] total*" (emphasis in original). The record contains no documentation from any identified source to attest, first-hand, to the petitioner's participation or performance in these events. The record does contain a table from an unidentified English-language publication, listing the petitioner as the fourth of eight listed runners in an 800 meter event in Lisbon in 1994.

Counsel also describes the petitioner's accomplishments while she was a student at the University of Southern California ("USC"):

[The petitioner] has been a *four-time All-American, four-time Pac-10 Champion*, was twice named *Pac-10 Women's Track Athlete of the Week*, was *second runner-up in the 1,500m at the NCAA Championships*, and is *Pac-10 and USC's record holder for the 1,500m*. In addition, [the petitioner] *won the 1998 Triton Cross-Country Invitational*, and in that same year, was bestowed the *1998 Pac-10 Cross Country All-Academic second-team honors*. [The petitioner] was also selected as *USC's Most Valuable Runner* for 1996 and 1999 and *Most Outstanding Athlete* for 1997 and 1998, in addition to being the USC Trojan Pride Spirit Award Winner (1999) as the *Most Inspirational Athlete*.

USC records, and awards bestowed by USC, are not national or international awards because no one other than USC athletes can qualify. Similarly, the Pacific-10 Conference ("Pac-10") events are regional, limited to ten universities located in four states on or near the U.S. Pacific coast.

To document her accomplishments, the petitioner submits a partial copy of the *1999 USC Track & Field Media Guide*, which indicates that the petitioner is "a four-time Pac-10 champion and the USC 1,500m record holder" and "one of the top middle distance runners in the country." Among national competitions, the *Guide* indicates that the petitioner finished third in the 1,500m event at the NCAA Championships in 1996 and 1998, and fourth in the same event in 1997. Other events described in the *Guide* are specific to USC or to the Pacific-10 Conference.

The record contains certificates issued by the National Collegiate Athletic Association, acknowledging the petitioner's participation in the 1996 and 1998 National Collegiate Women's Outdoor Track and Field Championships, Division 1. A certificate from the NCAA All-American Board indicates that the petitioner was a member of the 1996, 1997 and 1998 All-

American Track and Field 1,500m Team. Other certificates relate to the petitioner's work at the district, rather than national, level.

The petitioner finished first in the Mt. San Antonio College Relays in 1998, and second in 1997 and 1999. While many other competitors, like the petitioner, represented California universities, the participation of a runner from Boston College suggests that this event is national.

Counsel states that the petitioner is slated to compete in a number of then-upcoming track and field events, including U.S. Olympic qualifying trials. The petitioner submits a list of future track meets, but this list shows only that the events had been scheduled to occur; they do not show or imply that the petitioner was scheduled to compete in any of them.

Although not all of the petitioner's victories have been in nationally significant competitions, the record amply documents the petitioner's satisfaction of this criterion.

*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 articles from various sources, but she has not shown that any of these sources represent major media, as opposed to local or campus publications which, by nature, cannot convey the petitioner's reputation beyond a limited circulation area. None of the English-language publications appear to originate from outside California. Some publications are not identified, and thus cannot satisfy the plain wording of the regulation.

The petitioner submits a "fax" copy of listed results from the L.A. Invitational. The document is only partially legible, owing to the small size of the print and the loss of resolution inherent in fax transmission. A handwritten note in the margin indicates that the results appeared in the *Los Angeles Times*. Even assuming this attribution to be correct, the inclusion of the petitioner's name among what appear to be dozens if not hundreds of other names does not show that the petitioner has received more national media coverage than almost any other athlete in her sport.

Photographs of the petitioner appear within an article published in *Super-Relaks*, a Polish-language publication. Judging from the format of telephone numbers appearing in an advertisement adjacent to the article, the publication appears to originate outside the United States, presumably in Poland. The record does not include any translation of the article as the regulation requires. We therefore cannot determine the content of the article. Also, the petitioner has not shown that *Super-Relaks* represents major media.

For the reasons discussed above, we cannot find that the petitioner is among the most-covered track and field athletes in the U.S. media, or that she has attracted any significant national coverage.

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

Counsel states “[i]n Poland, [the petitioner] is currently the **National Record Holder** in the 800m and 1,500m.” The record contains no supporting documentation from any source competent to attest first-hand to this record.

The record contains letters from coaches and training partners who assert in general terms that the petitioner is a talented runner as well as a model member of the local community, but these letters do not establish that the petitioner is nationally or internationally acclaimed as a top middle distance runner.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

Counsel states:

Track and Field has become a sport in which a substantial amount of income can be earned by an athlete of [the petitioner’s] caliber. . . . [The petitioner] has the potential to earn up to \$10,000 per track event, in addition to bonuses, honorariums and endorsements. She will also receive valuable athletic equipment and apparel from various sponsors. Her income . . . demonstrate[s] that she is well deserving of the extraordinary athlete status.

The general assertion that track and field athletes have the potential to earn large sums of money in no way demonstrates that the petitioner has in fact earned a substantial income in this manner. Counsel’s assumption that the petitioner will win races, and that sponsors will tender lucrative endorsement offers, is not probative. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The record shows that the petitioner has signed a one-year contract with an agent, with representation expressly limited to the Los Angeles area. This contract establishes the business relationship between the petitioner and her agent, but it does not demonstrate that the petitioner had actually received any income from competitions or endorsements as of the petition’s filing date.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, counsel states that health issues had interrupted the petitioner’s training, but that the petitioner “will resume training this summer” for events beginning in August, 2001. Counsel repeats the assertion that the petitioner has won or placed highly at major meets in Europe, but again the accompanying submission is devoid of supporting evidence.

The petitioner has submitted letters from USC athletic officials, affirming that the petitioner's health forced the petitioner "to cut down her strenuous training . . . she was not able to train at the level that would make her competitive at the world class level" and she "could only compete in a few meets." Thus, the petitioner was not a viable candidate for the 2000 Olympic Games.

The petitioner has also submitted a letter from Brigita Langerholc, another runner at USC who did compete in the 2000 Olympics. [REDACTED] offers positive comments about the petitioner's character and her skill as a runner, but her letter does not establish that the petitioner has earned any sustained reputation outside of USC's track and field program.

The petitioner submits a list of upcoming track and field meets, with some events highlighted, apparently to indicate those events in which the petitioner plans to participate. The petitioner's plans to participate in future events cannot show sustained acclaim, although they do address the statutory requirement that the petitioner establish intent to continue in the field of endeavor.

The only other materials submitted in response to the director's notice are three photographs of the petitioner running or posing with other USC athletes.

The director denied the petition, stating that the petitioner has failed to establish that the petitioner has reached and remained at the top of her field nationally or internationally. The petitioner filed a motion to reopen, submitting copies of previously submitted documents and some new materials. [REDACTED] director of Track and Field at USC, states that USC recruited the petitioner after "her fourth-place finish in the 800 meters in the World Juniors in Lisbon, Portugal and a runner-up finish in the 1,500 meters in the European Cup. In addition, in 1997, [the petitioner] ranked sixth in the world in the 1,500m and 16<sup>th</sup> in the world in the 800m." To support these figures, the petitioner submits copies of tables from an unidentified source. Another table indicates that the petitioner had the fastest time in the U.S. in the 1,500 meter event in 1997.

We have already acknowledged that the petitioner has won national awards as a track and field athlete. By regulation, she must satisfy two other criteria to qualify for the extremely restrictive visa classification that she has chosen to seek. The petitioner cannot overcome her failure to meet other criteria simply by submitting additional evidence relating to an already-satisfied criterion.

The director reopened the proceeding on the petitioner's motion and again denied the petition, stating that the petitioner's junior-level competition and speculative expectations of future success cannot establish that the petitioner is among the very top competitive track and field athletes. On appeal, the petitioner again submits copies of documents which the director had already reviewed and found not to be persuasive. The submission of third copies of these documents adds nothing of substance to the record. The petitioner submits no new documents on appeal; the only new submission is counsel's brief.

On appeal, counsel takes issue with the director's finding that the "petitioner failed to meet the statutory requirement of *extensive documentation* which demonstrates sustained national and international acclaim" (counsel's emphasis). Counsel contends "despite the findings made by the Service, the applicable statutes make no mention of requiring 'extensive documentation'" (counsel's emphasis). Contrary to counsel's assertion, the phrase "extensive documentation" does in fact appear in the statute, at section 203(b)(1)(A)(i). This section of the statute is quoted in full at the top of this decision and we need not repeat it here. It is possible that counsel means to say that the phrase "extensive documentation" does not appear in the regulations. While that exact phrase does not appear in the regulations, nevertheless the regulations are nothing more than the implementation of the statutory language. The statutory requirement of "extensive documentation" has been interpreted in 8 C.F.R. 204.5(h)(3) as requiring many kinds of documentation, from a broad spectrum of possible sources.

Counsel once again lists the events that the petitioner has either won or placed highly. We again state here that we do not contest the petitioner's satisfaction of the criterion pertaining to lesser national or international prizes and awards. The petitioner has not won any award that has been recognized as a major, international recognized award such as an Olympic medal. Because the petitioner's awards, while relatively abundant, are at a somewhat lower level, those awards cannot by themselves establish the petitioner's eligibility. The petitioner must meet at least two other regulatory criteria, regardless of how amply she has satisfied one particular criterion. Neither the petitioner nor counsel has ever specified which other criteria the petitioner has purportedly satisfied.

Counsel asserts that "the Service was in error for requiring petitioner to prove that she received (or will receive) an especially high income when such is not the standard and the Service failed to provide the comparison pool by which it defined 'an especially high income.'" The record, as it stands, contains no evidence at all regarding any compensation the petitioner has ever received or ever will receive.

Counsel notes that the petitioner has "secured a contract with [a] talent agency" and that the petitioner "can earn as much as \$10,000 per track event, in addition to bonuses, honorariums and endorsements." Statements about what the petitioner "can earn" at events that have not yet taken place are, by nature, speculative and conjectural, and do not constitute evidence in any rational sense of the word for the purposes of this proceeding. The petitioner has not shown that she has ever participated in a professional event, and her contract with a talent agent is not in any way a guarantee of payment or income because the agent does not employ the petitioner.

With regard to remuneration, we repeat here the plain wording of the regulation at 8 C.F.R. 204.5(h)(3)(ix), which requires that the petitioner submit "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." By law, the burden of proof is on the petitioner to show that her salary or remuneration is "significantly high . . . in relation to others in the field." There is no concomitant burden on the Service to "provide the comparison pool." To satisfy the criterion pertaining to salary, the petitioner must show that she is among the highest-paid middle distance runners in the

United States (i.e., the country in which the petitioner has competed since the mid-1990s), and that she was among the highest-paid at the time she filed her petition. It seems highly unlikely that the petitioner can meet this last condition, because at the time of filing she was intending to compete in the Olympics, and in many events, professional athletes cannot qualify to compete. The petitioner has also failed to show that she had already received any of the endorsement deals which, counsel assures the Service, are forthcoming at some unspecified point in the future.

Counsel notes that USC officials believe the Service erred in denying the petition. At issue here is not the petitioner's reputation within USC, but rather her acclaim and recognition at a national or international level. Whatever the overall reputation of USC's women's track and field team, and whatever the opinions of USC's officials, no alien can ever establish eligibility as an alien of extraordinary ability simply by showing that he or she is one of the best athletes at USC. The statute and the regulations call for national or international acclaim. Acclaim that is limited to the Pacific coast, or to one university, falls short of this essential and non-waivable standard. Given the chance to supplement the record with further evidence of sustained acclaim, the petitioner responded with evidence of a career-threatening medical condition.

The argument could also be made that college athletics is not a field of endeavor, being necessarily limited by the duration of the athlete's studies. The petitioner had already graduated from USC by the time she filed her petition. The record does not contain any evidence that the petitioner has won any significant competitions after her graduation.

The petitioner has met only one of the ten regulatory criteria set forth at 8 C.F.R. 204.5(h)(3). Because the petitioner has not met at least three of the criteria, she has not established eligibility and the petition cannot lawfully be approved.

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 herself as a middle distance runner to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.