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Immigration and Naturalization Service

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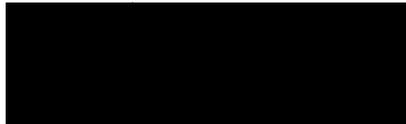


File: [Redacted] Office: Vermont Service Center Date: 19 MAR 2002

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:



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, Vermont 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 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.

This petition, filed on November 12, 1999, seeks to classify the petitioner as an alien with extraordinary ability as a rowing coach. The petitioner has submitted several documents pertaining to his own career as a coxswain for Polish national teams in the 1970s and 1980s. The petitioner served as a coxswain for boats with two and four-member rowing crews. A coxswain is the helmsman of a rowed boat. Counsel offers further information regarding a coxswain's function: "The role of a coxswain is to steer the shell, usually from a seat in the stern, though in some pairs, fours and eights, the coxswain's space is located in the bow-deck of the shell so that the coxswain actually slides his or her legs into the bow-deck of the shell."

The petitioner in this case seeks employment not as an extraordinary athlete, but, rather as an extraordinary coach. As such, the petitioner's evidence demonstrating extraordinary ability as a coxswain cannot, by itself, demonstrate the beneficiary's eligibility for the classification sought. There is no evidence that the petitioner, age forty-one at the time of filing, remains consistently active as a competitor in his own right. The documentation submitted in support of the petition reflects that the petitioner last competed in rowing in 1989.

The petitioner submits letters from the Executive Director of Community Rowing, Inc. and the Head Coach of Stanford University Men's Crew expressing some interest in employing him as a coach. The letter from the Executive Director of Community Rowing, Inc. is addressed to counsel for the petitioner and states that his organization would be interested in pursuing the petitioner as "a seasonal part time coach" upon reviewing the experience and qualifications of the petitioner. The letter from Stanford's rowing coach thanks the petitioner for expressing interest in an "assistant coach" position and acknowledges that his team could use someone with experience in the field of coxing.

As demonstrated by these letters and indicated under Part 6 of the I-140 petition, athletic competition is not the field in which the petitioner seeks to continue working. Even if the petition sought to classify the beneficiary as an extraordinary athlete, 8 C.F.R. 204.5(h) requires the beneficiary to "continue work in the area of expertise." The beneficiary, however, seeks employment as a coach in the United States. While a coxswain and a crew coach certainly share a common knowledge of the sport of rowing, the two rely on different sets of skills. Thus, competitive athletics and coaching are not the same area of expertise. We reject the contention that an athlete can demonstrate extraordinary ability as a coach solely through his achievements as an athlete. Moreover, coaching is not necessarily within every extraordinary athlete's area of expertise. This decision will consider whether the petitioner has established national or international acclaim as a coach. We will also examine whether the petitioner has sustained his previous acclaim as an athlete through his coaching.

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.

In a memorandum submitted in support of the petition, counsel argues that the petitioner's one-time achievement, First Prize in a team of four with a coxswain at the Henley Royal Regatta in 1986, is sufficient to warrant the approval of the petition. Despite this stance, counsel also submits evidence addressing three of the ten regulatory criteria. In her initial brief and again on appeal, counsel argues that the petitioner has documented a major, internationally recognized award because his team's boat won the Prince Philip Cup at the Royal Regatta Rowing Competition in Henley, England. Counsel describes this race as "the most prestigious race in rowing." 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 regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Examples of one-time awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields. Absent compelling evidence, we cannot find that the "Prince Philip Cup" enjoys immediate international recognition on a par with the almost universally-known awards described above.

While winning First Prize at the Henley Royal Regatta is impressive, it does not enjoy the same reputation held by the Summer Olympics or World Championships of Rowing, which are universally acknowledged as the ultimate in international athletic competition. According to the Henley Royal Regatta's website, the Regatta has its own rules and is not subject to the jurisdiction of International Rowing Federation. Further, the website states that there is a "magnificent array of trophies, the most prized being the Grand Challenge Cup for Eights." It is worth noting that the petitioner did compete for the Polish Rowing Team as a coxswain at the 1988 Summer Olympics (placing ninth), but won no medal. In the World Championships of Rowing, the petitioner's team placed ninth in 1983, eighth in 1985, sixth in 1986, and ninth in 1987. The single major award criterion is meant to be even more restrictive than the ten lesser criteria outlined below. The petitioner's team's receipt of the Prince Philip Cup will be properly addressed below as a lesser internationally recognized prize or award.

The petitioner submits evidence relating to three of the ten lesser criteria. It is insufficient, however, to merely submit evidence relating to three criteria; the evidence submitted for each criterion must demonstrate, contribute to, or be consistent with sustained national or international acclaim. The petitioner has submitted evidence which, counsel 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.

As stated above, the petitioner won the Prince Philip Cup and represented Poland in the World Championships and Summer Olympics. In addition to placing in the top ten at various international competitions, the petitioner and his crew teams won the Polish National Rowing Championships in 1977, 1978, 1981, and 1982. The petitioner has amply satisfied this criterion as an athlete. These awards, however, were all based on the petitioner's ability as a coxswain. These awards cannot establish that the beneficiary has sustained national or international acclaim as a rowing coach.

It is not clear that significant awards exist for rowing coaches. Nationally or internationally recognized prizes or awards won by a coach's athletes, however, can be considered comparable evidence for this criterion under 8 C.F.R. 204.5(h)(4). The petitioner offers no evidence regarding his accomplishments as a rowing coach or the achievements of his students.

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.

Counsel asserts that the petitioner meets this criterion based on his selection to compete in the Olympics and other international competitions as a member of the Polish rowing team. While a team is not an "association," we could consider such evidence as comparable under 8 C.F.R. 204.5(h)(4) because membership in an Olympic team is the result of multi-level national competition, supervised by national experts. There is undeniable prestige in membership on an Olympic team. Once again, however, the petitioner was selected for these teams based on his ability as a coxswain, not a rowing coach. Thus, his membership on these teams cannot establish that the petitioner has national or international acclaim as a coach.

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 evidence of published material regarding his accomplishments as a coxswain, but not a coach. The record contains no published materials mentioning the petitioner after 1988. Therefore, the evidence submitted under this criterion is insufficient to demonstrate that the petitioner has attracted the sustained attention of the national press or major media.

It should be noted that the petitioner submits copies of several articles with incomplete translations. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Unattested summary translations of various articles cannot suffice to satisfy this criterion. Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that he was featured because of his achievements as an extraordinary athlete or coach. Further, the petitioner has omitted evidence regarding the extent of the publications' circulation.

The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that barely even mention the alien cannot satisfy this criterion. Involvement in a rowing event that, as a whole, merits media coverage does not satisfy this criterion. Many of the articles submitted only briefly mention the petitioner's name as a team member. Because the statute demands national or international acclaim, the petitioner cannot satisfy this criterion unless he has been the subject of coverage in major national or international publications. Local newspapers and regional magazines with limited circulation do not constitute major media in this regard. The petitioner has not demonstrated sustained attention from major national media such as magazines like Sports Illustrated or its Polish equivalent. This criterion, like all criteria, is intended to separate the petitioner from the vast majority of his colleagues and is thus meant to be interpreted restrictively.

Comparable Evidence under 8 C.F.R. 204.5(h)(4).

While 8 C.F.R. 204.5(h)(4) allows for comparable evidence, a petitioner must demonstrate that the regulatory criteria are not applicable to the alien's field. Where an alien is simply unable to meet three of the regulatory criteria, the use of comparable evidence is inappropriate.

As further evidence of the beneficiary's successful rowing career, the petitioner submits a letter from [REDACTED] Secretary General of the Polish Rowing Association. He describes the petitioner as "one of the best coxswains in the history of Polish rowing." He adds: "To this day in Poland we are not able to find an athlete (coxswain) who would be able to demonstrate the class and ability shown by the petitioner." [REDACTED] also states: "...[the petitioner] was an athlete, who during his rowing career of twelve years, developed the opinion of being an excellent athlete who many times filled the role of team coach."

The above letter reflects the Polish Rowing Association's recognition of the petitioner as a top coxswain. While the letter mentions the petitioner as filling the role of team coach during his twelve-year career as a coxswain, there is no evidence in the record to demonstrate the petitioner's skills as an outstanding rowing coach since 1989. Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The above discussion reveals that the petitioner fails to meet any of the regulatory requirements as an extraordinary coach. We concur with the director's determination that the petitioner has not demonstrated sustained national or international acclaim in his field of expertise as a rowing coach. Extraordinary ability as an athlete is not, in and of itself, evidence of extraordinary ability as a coach. We do not deny that there exists a nexus between competing in and coaching rowing. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. In this case, however, the petitioner has only satisfied two of the lesser criteria as an athlete. Even if we were to find the petitioner to qualify as an athlete of extraordinary ability, we must still consider the level at which the alien acts as coach. A coach of athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

There is no question that the petitioner has satisfied two of the above lesser criteria as an athlete. The beneficiary has won national and international rowing competitions and represented Poland in the Olympics. As stated above, these accomplishments are not evidence of a one-time achievement in the petitioner's field. The accomplishments, however, are relevant to the petitioner's development