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**U.S. Department of Justice**  
**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: **NOV 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. The Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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):

Initial evidence: 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 the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field;  
or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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 petitioner claimed to have derived sustained national acclaim from his invention of this luge sled, and his subsequent activity selling the sleds to ski resorts for rental. The director determined that the petitioner had not earned such acclaim, and the director denied the petition. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal. On motion,

counsel states that the AAO's decision contains "errors in application of law and misinterpretations of fact."

In dismissing the appeal, the AAO stated:

The petitioner submits an article which, 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 as 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.

Counsel states:

The [pertinent] legislation grants the INS the ability to recognize and reward genius in the hopes of enriching our society. . . .

The "substantial benefit" to our society contemplated by the extraordinary alien section does not necessarily mean "monetary benefit." Historical accounts are full of references to great geniuses who were financial failures. Vincent van Gogh, Rembrandt van Rijn, Wolfgang Amadeus Mozart, and Mother Theresa [sic] were all notorious paupers. . . . Thomas Edison . . . nearly starved to death . . . prior to his "discovery" as a man of great insight.

None of the examples offered are relevant. Mother Teresa was a nun who lived an ascetic lifestyle out of choice, rather than necessity; her ministry constantly received donations, and she won a Nobel Prize, which includes a very substantial sum of money. Van Gogh, Rembrandt, and Mozart were all artists rather than businessmen; whatever the artistic merits of their legendary work, their poverty does not reflect well on their skill as businessmen. Now that their reputations are secure, the works of Rembrandt and van Gogh command enormous sums of money. As to Thomas Edison's early poverty, as counsel acknowledges, he was poor only "prior to his 'discovery.'" It is a truism that, before Thomas Edison became famous as an inventor, he did not yet enjoy national acclaim for his work. Once Edison was recognized, he became hugely successful and a national celebrity, employing large numbers of workers. Edison, like all the other examples named, remains a household name even after his death.

In the present proceeding, the petitioner claims extraordinary ability not as an artist, or as a provider of humanitarian services, but as a businessman. It is hardly unheard of or arbitrary to judge the success of a business by its financial situation; a fundamental and central purpose of business is to generate profits, to provide a livelihood for the owner of the business. The

petitioner's evident lack of financial success is, therefore, a highly salient point in determining what extent of ability and acclaim the petitioner has demonstrated. The petitioner submitted evidence indicating that his business is generating so little income that the petitioner must perform "odd jobs" on the side in order to meet his expenses. This evidence, on its face, does not place the petitioner at the very top of his field as a successful business owner.

Counsel argues that the petitioner's field of endeavor, broadly defined, "is the sport of luge," and therefore the Service should consider the petitioner's entire career, from the late 1960s when he began competing through to the present day. Counsel states "[i]t is not a reasonable approach . . . to bifurcate [the petitioner's] involvement in the sport of luge into competition participation and luge peddling." It remains that both the statute and regulations require sustained acclaim. Even if the petitioner had achieved national acclaim thirty years ago as an athlete (a contention that the AAO has not stipulated), the petitioner still must show that he remains, even now, a nationally or internationally recognized figure in "the sport of luge." Counsel contends "[t]he fact that [the petitioner] has manufactured a commercial product is ancillary and incidental to his role as a pioneer and inventor in the sport of recreational luge," but his primary activity at present appears to be his efforts to promote that commercial product, and he is "a pioneer and inventor" only because he invented that commercial product. By statute and regulation, the petitioner must show that he will continue to work in the area of claimed extraordinary ability. His current activities in that regard are, therefore, profoundly relevant to the matter at hand, as is the success (or otherwise) of those activities.<sup>1</sup>

Counsel states:

[The petitioner's] subsequent attempts to market the sled in the United States have been interpreted as a failure by the I.N.S. Respectfully, the Petitioner disagrees. The Petitioner has offered evidence that . . . at total of 4,560 people per year have experienced the luge. Over the course of the last five ski seasons, this figure has grown to 22,800 people.

Counsel's figures assume that no one ever rents a sled more than once. Repeat business would decrease the total, because counsel's figures derive from the number of rentals rather than the number of persons renting sleds. Even then, it remains that the petitioner has offered no comparative evidence to establish that these figures are demonstrative of major national or international success. The above figures cited by counsel derive from the same *Denver Post* article which states that the petitioner has not "seen a dime" from his sled, and therefore "supports his fledgling company by installing drywall, painting homes and working as a carpenter." The article (as noted in the previous AAO decision) also indicates that the petitioner has only sold roughly 50 sleds, and there has not been sufficient demand to justify placing the sleds into mass production.

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<sup>1</sup> Counsel claims to cite "existing caselaw" supporting counsel's position. The cited case is not a published precedent decision, but rather a redacted decision published by a third party with no involvement from any government body.

Counsel states that the petitioner “has received over 138 inquiries regarding his invention from other ski resorts.” It remains that, according to counsel, only two resorts have actually begun renting sleds. Counsel claims “[w]hile an increase in the popularity of the sport of luge in the United States has been slow, there are indications [that] its popularity is on the rise, such as the 2002 United States Olympic luge medal wins.” It is pure speculation to state that the luge will become more popular and therefore demand for the petitioner’s sleds will increase. A finding of eligibility must rest on the petitioner’s existing acclaim, not on conjectural assertions regarding possible future acclaim. Furthermore, the awarding of Olympic medals is based on athletic performance, rather than on popularity. While it is conceivable that U.S. athletes may increase the visibility of luge by winning medals, winning such medals has nothing to do with how popular the sport is in the United States except to show that some American athletes are sufficiently interested in the luge to devote their time and effort to training and competition.

Counsel asserts that the petitioner’s sled “is a work of genius, as evidenced by the fact that it is the only such luge in existence.” Uniqueness is not necessarily a sign of genius. As the AAO noted in the prior appellate decision, the fact that no one else seems to have invented a portable luge sled could merely indicate that no one else finds the idea to be worth pursuing. Counsel adds “pioneers are, by their very nature, exceptional and denying benefits to [the petitioner] could alter the course of the history of sport in the United States.”

Eligibility does not rest on the question of whether the petitioner is a “pioneer.” Eligibility rests on the petitioner’s ability to produce evidence to satisfy at least three of the regulatory criteria at 8 C.F.R. 204.5(h)(3) in a manner that demonstrates sustained acclaim at a national or international level. Speculation about “the course of the history of sport in the United States” is not evidence in any reasonable sense of the word. Furthermore, the record shows that the petitioner has been attempting for roughly twenty years to popularize his invention. The record does not demonstrate that, during that very substantial period of time, the petitioner and his invention have attained national acclaim or even built up substantial momentum toward such acclaim. While there have been historic innovations in “the history of sport,” there have also been dead ends, short-lived fads, and outright failures. James Naismith did not become nationally known because he invented the game of basketball. He became known because Americans across the country started playing it. Such national recognition, according to the record, continues to elude the petitioner. Whatever posterity may hold in store, as of the petition’s filing date in 2001 his portable luge sled was little more than, in counsel’s words, a “funny contraption.”

Counsel states “[l]ess than two decades ago, the fledgling sport of snow-boarding was offered at very few ski areas and was considered an oddity. Today, it is a major industry.” The petitioner’s sleds, introduced at roughly the same time, are not a major industry. There is always the possibility that the petitioner’s work will one day become nationally known and the petitioner will at last achieve the acclaim for which he has striven for so long. At that time, the petitioner may file a new petition that can take the new facts into account. The denial of this petition is not a declaration that the petitioner will never be known for his work. It is simply a finding that such recognition has not yet come to pass. We reject counsel’s apparent contention that recognition is an inevitable result of the petitioner’s status as a “pioneer.”

Counsel discusses potential national benefit arising from the petitioner's work, such as the "welcome distraction" of Olympic competition following the terrorist attacks of September 11, 2001, and the "physical exertion" of luge sledding which could combat the "epidemic of obesity" in the United States. The petitioner has not shown that his luge sleds (which, as counsel has repeatedly stressed, are very different from the sleds used in Olympic competition) have had or are especially likely to have a unique impact in these areas. Many sports involving strenuous physical activity, such as tossing the caber, have failed to gain a significant foothold in the United States. Furthermore, while obesity does result in part from a lack of exercise, counsel's claim of national benefit relies on the assumption that people at risk of obesity shun exercise only because they are unaware of recreational luge sledding. If the people who rent luge sleds at ski resorts are the type of people who already enjoy winter sports, the petitioner's impact in the area of physical fitness would appear to be negligible.

Discussing the evidentiary criteria at 8 C.F.R. 204.5(h)(3), counsel states that the petitioner "was twice the National Luge Champion of Norway," and argues "[t]he idea that these awards are not relevant to his abilities in his field of endeavor, that of the luge, is not credible." Counsel asserts that the petitioner's "notoriety and fame in Norway as a competitor allows [the petitioner] to promote the sport effectively." The petitioner, however, is not attempting to promote the sport in Norway; he is attempting to promote it in the United States, a place where he appears never to have earned such "notoriety and fame." Again we return to the issue of the petitioner's prospective work in the United States. The petitioner seeks to reside in the U.S. not to compete, but to make and sell luge sleds. The only connection at all between the two activities is that luge sleds are involved, and counsel has repeatedly emphasized that the sleds that the petitioner makes and sells are not the same as the sleds that are used in luge competitions. The petitioner's ability to ride competitive luge sleds in the late 1960s and early 1970s is not relevant to how much acclaim he has earned for making and selling smaller, slower, non-competitive sleds.

Regarding media coverage, counsel asserts that the *Denver Post* constitutes major media and therefore the petitioner has clearly satisfied the related regulatory criterion at 8 C.F.R. 204.5(h)(3)(iii). Counsel states that the article "documents the Petitioner's pioneering efforts and his acclaim at Vail and Snowbird ski resorts." Acclaim at two resorts is not national acclaim, even if we assume that the rental of the petitioner's sleds constitutes "acclaim." We cannot ignore the content of the article, which plainly states that the petitioner has had minimal success in his venture. Counsel states that the petitioner "should not be penalized for the fact that he has suffered for his art and has not made a fortune on the sale of [his] Sled." Denial of a petition, however, is not a penalty; nothing is being taken away from the petitioner that the petitioner already had. Rather, the petitioner, on his own initiative, has petitioned the Service for a benefit, and the burden is on him to demonstrate that he qualifies for the benefit that he has chosen to request. We cannot infer national acclaim from an article that indicates that, at any given time during the winter sports season, forty of the petitioner's sleds are in use in the United States.

Counsel claims that the appellate "decision reads like a condemnation of the sport of luge," but does not elaborate or cite any particular passage which is derogatory toward the sport. Counsel then

makes the untenable assertion that the petitioner “is necessarily distinguished in the field of pioneering the sport of luge in the United States, as he is alone in the field.” This argument is specious for at least two reasons. First, the statute and regulations demand evidence of sustained national or international acclaim. The petitioner is not “necessarily distinguished” by virtue of being the only entrepreneur pursuing recreation luge sledding. The petitioner must earn distinction by acquiring a national reputation. Second, counsel’s assertion is inconsistent with counsel’s previous arguments in this same motion. Counsel has repeatedly argued that the AAO must look at the petitioner’s entire career, and consider his field to be “the sport of luge.” Here, however, counsel narrows the petitioner’s field to “the field of pioneering the sport of luge in the United States” and maintains that the petitioner is the only person in that field.

Certainly, counsel is correct in stating that an alien can qualify as an alien of extraordinary ability even if he or she is not a household name, appearing on the covers of popular magazines. The amount of recognition, and the form that recognition takes, will vary from field to field. A top actor, singer, or football player will tend to have more public visibility than a top particle physicist or publishing executive. Still, the regulations are flexible and applicable to a broad variety of fields of endeavor. It remains that the petitioner must, by statute and by regulation, establish sustained national or international acclaim to be eligible for the classification. It cannot suffice, under any circumstances, simply to proclaim oneself to be a “pioneer.”

Counsel’s arguments concerning the petitioner’s work as a judge of the work of others and his contributions of major significance have already been addressed and rebutted in the prior appellate decision. The petitioner’s work as a coach did not involve any “judging” that is not inherent in the work of every coach, and his coaching career ended years ago. Counsel’s argument that the petitioner’s sled is a self-evident contribution of major significance is not supported by any evidence that the petitioner’s sled is among the most popular pieces of sporting equipment available for rental at winter resorts.

Counsel, on motion, offers a new claim that the petitioner has satisfied a previously unclaimed criterion. 8 C.F.R. 204.5(h)(3)(vi) calls for evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. Counsel states that the petitioner satisfies this criterion because he wrote the instructions for his luge sled, as well as “a highly technical manual . . . that instructs the reader in the design and development of a luge track.”

A manual, prepared and privately printed by the petitioner for use in his own “design consulting projects,” is not a publication. There is no evidence that the petitioner’s manual has been published in any form. To emphasize, printing is not publication, and the petitioner does not automatically satisfy this criterion by writing technical materials. The petitioner has not established any distribution of his manual outside of his own consulting activities. A luge sled does not become a major publication merely because the operating instructions “are conspicuously printed on the seat cover of every sled.”

Another newly claimed criterion appears at 8 C.F.R. 204.5(h)(3)(vii), evidence of the display of the alien’s work in the field at artistic exhibitions or showcases. Counsel declares “[a]s Shakespeare wrote, ‘All the world’s a stage,’” and asserts that artistic display “is not confined to stodgy art

galleries.” Counsel observes that the artist Christo creates massive art works, far too large for any museum to accommodate them. We note that Christo is well known for creating these works. Counsel contends that the petitioner’s sled is a “work of art” that “is on display . . . over 120 days per year.” By this reasoning, every piece of athletic equipment – indeed, every tangible object – is on “display” if it is someplace where the public can see it. The record is devoid of evidence that anyone other than counsel considers the petitioner’s sled to be more of a “work of art” than any other randomly selected piece of athletic equipment. The rental and use of these sleds is not an “artistic display.”

Counsel closes by stating “[w]e live in a cynical world, where most people lack loyalty and passion. . . . In such a world, [the petitioner’s] life long dedication to and passion for the sport of luge is nothing short of miraculous. If this man . . . wants to be the Johnny Appleseed of the sport in the United States, who will not say that this is extraordinary?” Even if the petitioner is “extraordinary” in the sense of having a greater sense of dedication than many people, this has nothing to do with whether he has established “extraordinary ability” in the sense set forth in the statute and regulations.

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. Counsel’s arguments on motion do not rebut or overcome the AAO’s findings. 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

**ORDER:** The Associate Commissioner's decision of July 18, 2002 is affirmed. The petition is denied.