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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: OCT 08 2002

IN RE: Petitioner:
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 as a huntsman. In a well-reasoned decision, the director concluded that the petitioner had not established that the beneficiary meets at least three of the ten regulatory criteria and that the evidence submitted as "comparable" did not demonstrate sustained national or international acclaim.

On appeal, counsel does not challenge the director's detailed analysis of the regulatory criteria. Instead, counsel continues to argue that the regulatory criteria are not applicable to the field of fox hunting and that the Service should accept "comparable evidence" pursuant to 8 C.F.R. 204.5(h)(4).

The plain language of 8 C.F.R. 204.5(h)(4) limits consideration of comparable evidence to instances wherein the regulatory criteria at 8 C.F.R. 204.5(h)(3) "do not readily apply to the beneficiary's occupation." In cases where the original criteria do, in fact, readily apply to the beneficiary's occupation, the beneficiary's own inability to meet those criteria does not trigger the "comparable evidence" clause.

Counsel relies on the testimony of Lt. Col. Dennis Foster who states on appeal:

> It is true that it is in the nature of the hunt service that its members do not enter competitions, receive publicity, write articles, etc. Their recognition must come, if at all, through the willingness of peers and employers personally to acknowledge their accomplishments and reputation.

The record, however, contradicts this assertion. The petitioner submitted evidence of competitions, namely hunting competitions and dog shows for hounds and beagles. In addition, the record contains evidence of several articles and books on fox hunting.[1] In the same letter, Lt. Col. Foster himself asserts that he has been "quoted in most major media (radio, TV, and newspapers.)" In addition, other criteria also clearly apply to the field. For example, the record contains reference letters from two hunting competition judges. Thus, the "judge of the work of others" in the field criterion applies. In addition, a Master Fox Hunter for a distinguished hunt club might be able to meet the leading or critical role criterion. As such, that criterion also applies.

Further, we reject the implication that the Service should waive the objective sustained national or international acclaim requirement and rely on subjective testimony of ability in fields where national acclaim is not common.

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[1] An advanced search on the Internet browser "Google" of "journal" and "foxhunting" produced 821 results. A review of the first page of the results reveals that many of the results are articles on fox hunting appearing in horse and sporting journals.

Moreover, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. 204.5(h)(3), as well as comparable evidence submitted pursuant to 8 C.F.R. 204.5(h)(4), must depend on the extent to which such evidence demonstrates, contributes to, or is consistent with sustained national or international acclaim at the very top of the field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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."

The ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. The decisions cited by counsel which allegedly conclude otherwise are non-precedential cases for a similar non-immigrant classification.

Even where a criterion is not entirely applicable, the comparable evidence submitted must be just that, comparable to the ten objective criteria determined to be indicative of sustained national acclaim. In our discussion of the individual criteria below we note several examples of comparable evidence that might be available in the field based on the evidence of record.

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). These 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 seeks to classify the petitioner as an alien with extraordinary ability as a huntsman. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The petitioner has submitted evidence that relates to 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 asserted initially that huntsmen do not enter competitions. In response to the director's request for additional documentation in which he stated that the regulatory criteria appear to readily apply to the beneficiary's field, counsel refers to a new reference letter asserting that huntsmen are not ranked in Great Britain or North America. The director accepted these assertions. The record, however, contains evidence that huntsmen do compete in judged competitions.[2] We acknowledge that the evidence of record is for a regional competition. If no national competitions are held, however, comparable evidence of national acclaim might consist of awards from several regional competitions in different regions, depending on their significance. The petitioner has submitted no such evidence.

Robert Wagner, president of the petitioning hunt club, asserts:

> Recently at the 2001Western Challenge, [the beneficiary] was recognized by the internationally renowned judges by receiving the highest marks for his skills as Huntsmen.

While not indicating whether or not the beneficiary won any awards at this competition, Mr. Wagner asserts that the beneficiary was hampered by having only trained the dogs for part of a season and the rough terrain of the hunt. Mr. Wagner continues:

> Several of the judges told me personally after the competition that they were extremely impressed with [the beneficiary's] abilities, and that they believed that [the beneficiary] was one of the finest that they had observed for some time.

James A. Nance, Master Foxhounds at Juan Tomas Hounds, states:

> I served as a Judge at the Western Hunt Challenge for Spring 2001, where [the beneficiary] was a competitor. [The beneficiary] had the most professional appearance and performance of any competitor. All of the judges commented on the professionalism of [the beneficiary.] His horse was also the best "turned out"

[2] In addition to the regional competition discussed in the record, we were able to find Internet references to competitions in Ireland at www.cornafean.com, and hunt buttons at www.equestriancornwall.co.uk, although the significance of these honors is unclear.

> showing that [the beneficiary] clearly knows how to train and care for hunt horses. Furthermore, [the beneficiary's] skill and relationship with his hounds was second to none.

John Gray, another judge at the competition, asserts that the beneficiary was an excellent horseman and performed impressively. Neither Mr. Nance nor Mr. Gray, however, specify any award issued to the beneficiary and the petitioner has not submitted any awards as evidence. Initially, the petitioner only submitted an article relating to the 2000 competition; however, in response to the director's request for additional documentation, the petitioner submitted an article regarding the 2001 competition. This article indicates only that Gamble Hill, not the petitioning club, won the competition. Mr. Nance does not explain why, if the 2001 judges felt the beneficiary was the best huntsmen at the competition, they did not issue him any awards.

Mr. Wagner also states that the beneficiary showed some of the petitioner's dogs at the Mission Valley Hound Show, once again noting that the beneficiary had only trained these dogs for part of a season. Mr. Wagner asserts that the petitioning club won several ribbons at this show, and in response to the director's request for additional documentation, the petitioner submitted an Internet article by the beneficiary describing the competition. The beneficiary asserted that his hounds placed second in "couple unentered hounds" and third in "couple of unentered bitches." The record contains a clipping from a magazine providing the results of this competition, reflecting only that the petitioner's dogs won second place for "couple of dogs unentered." The record does not explain the significance of this class. Moreover, the newspaper clipping reflects that the dogs were all from Texas, Kansas, Oklahoma, Arkansas, and Iowa. Thus, even if we accepted awards presented to dogs trained by the beneficiary as comparable evidence for this criterion, the petitioner has not established that this show is a nationally recognized competition.

In light of the above, the petitioner does not meet this criterion under the plain language of the regulations or with comparable evidence.

> *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.*

The director concluded that the beneficiary did not meet this criterion without discussion. On appeal, the petitioner submits a new letter from Luke F. Matranga, a Master of Fox Hounds with the petitioning club. Mr. Matranga challenges what is perceived to be the director's "notion that a Huntsman could or should be elected to a national office within the Masters of Foxhounds Association." Mr. Matranga continues:

> This is an impossibility for a Huntsman. The Masters of Foxhounds Association, of which I am a member, has elected Officers and a Board of Directors that, by their bylaws, may only be Masters of Foxhounds. There are no elected positions within the MFHA for a huntsman position. There are also no organizations in existence comprised of and for huntsmen.

That the beneficiary is unable to meet this criterion because the exclusive associations in his field require a higher level of achievement than he has obtained is not evidence that the criterion as a whole is inapplicable to his field.

Even if we accepted that reaching the highest position in the hunt service were comparable to this criterion due to the extensive training required to advance, the beneficiary has not reached the pinnacle of his field as argued by counsel. The highest position for a member of the hunt service is "Master of the Foxhounds" and the beneficiary is only a "huntsman." However important the huntsmen are to the success of the hunt, they have only reached the second highest level in the field. It is not clear that every huntsmen must have demonstrated an outstanding achievement to reach that level. As the beneficiary is not a "Master of the Foxhounds," we need not decide whether that level requires an outstanding achievement.

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.

Lt. Col. Dennis Foster asserts that "it is the nature of the hunt service that its members do not . . . receive publicity." Nevertheless, the petitioner submitted evidence of some coverage of the sport. Specifically, the petitioner submitted an article entitled "Faces in the Field" in an unknown publication. While the article, which describes a fair designed to teach city youth about the country, does not mention the beneficiary, his image is included in a collage of faces next to the article. The petitioner also submitted a section entitled "Heard it on the Grapevine" which appears to be in the Winter 2000 issue of *Hounds* providing updates on various foxhunters. The section announces the beneficiary's move from first whipper-in at Tiverton to first whipper-in and kennel-huntsman at the Vine and Craven.

Regarding "Heard in on the Grapevine," the publisher of *Hounds* is not provided. Judging by some of the other notices, such as Stan Ellwood announcing that he took his beagles for "two enjoyable days hunting in the hills," this section appears akin to announcing one's promotion or personal news in one's own alumni magazine. Such announcements are not evidence of national acclaim.

In response to the director's request for documentation, the petitioner submitted an article in an unknown publication regarding the 2001 Western Challenge. This article mentions the beneficiary by name, but is primarily about the competition and Internet photo essay on one of the petitioning club's hunts posted at nhh.glencarry, which appears to be the petitioning club's own site.

The director concluded that the beneficiary did not meet this criterion because the beneficiary was not mentioned in the "Faces in the Field" article and the petitioner had not established the circulation of the remaining materials. Counsel's only response on appeal is to quote Lt. Col. Foster. We concur with the director.[3]

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[3] We performed a "Google" advanced search on the Internet for "journal" and "foxhunting" without "radio" and got 821 results. A review of the first page of the results reveals that several horse and sporting journals print articles on foxhunting.

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.

The director concluded that the evidence did not reflect that the beneficiary participated in judging the work of others in the field beyond the normal supervisory duties of a huntsman over the whippers-in. We concur and note that the record contains evidence of competitive, judged hunting competitions and letters from the judges of those competitions. As such, this criterion clearly is applicable to the beneficiary's field.

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

Lt. Col. Dennis Foster, executive director of MFHA, states:

> [The beneficiary] is an excellent Huntsman. England and Ireland produce the majority of the world's finest Huntsmen and Whippers-in, and [the beneficiary] fits this profile. He has worked his way through the ranks of the profession to become a highly-trained internationally regarded professional athlete from the country that is established as the world leader in this sport. He has risen through the ranks to become a Huntsman, the ultimate rank in foxhunting. He has an excellent reputation in the hunting world.

Dr. Luke Matranga, the Master at the petitioning club, asserts that, as huntsman, the beneficiary has significantly improved the performance of the hounds. Dr. Matranga states:

> The hounds are more physically fit, alert, and anxious to hunt. They now function as a very cohesive unit who understand their job and do it well. The positive comments from our membership concerning the improvement in ou[r] hunting pack have been quite demonstrable.

Several individuals responsible for the hunt at Tiverton, where the beneficiary was a Whipper-in, provide general praise. Specifically, the petitioner provides letters with general praise of the beneficiary from A. Nash, Master of the Tiverton Foxhounds; S.W. Powles, a veterinary surgeon who attends the dogs at Tiverton; and Clive Bainbridge, a rider at Tiverton. The petitioner provides similar letters from other individuals associated with British, Scottish, and Irish hunt clubs who have worked with the beneficiary. None of these letters specify a contribution of major significance made by the beneficiary to the field of fox hunting as a whole.

In response to the director's request for additional documentation, the petitioner submitted letters from individuals who have hunted with the beneficiary. They provide general praise of his abilities.

The director stated:

> The record does not demonstrate that the beneficiary has made original contributions to the sport generally, or to any of its facets, that have been recognized or emulated by others in the field, or that his impact or influence to-date among professional huntsm[e]n in England, Ireland, or the United States has been significant.

Counsel does not challenge this determination on appeal other than to assert that fox hunting values tradition over innovation. Regardless, the petitioner has not established that the beneficiary meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted the beneficiary's own account of his hunt at the Western Challenge as posted on the Internet site www.dehner.com and his account of a hound show posted at nhh.glencarry.com. The director concluded that the beneficiary did not meet this criterion because the petitioner had not established the circulation and impact of either site. While "circulation" may not be applicable to the Internet, it remains that at least one of the sites is the petitioner's. Publishing one's own account of an event on one's employer's website is simply not comparable to publishing a scholarly work in a peer-reviewed journal.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The director concluded that this criterion only applies to the visual and performing arts. We disagree. As stated above, this criterion is clearly applicable to the beneficiary's field. The record establishes that the beneficiary has served as a huntsman for the petitioning club. The record does not establish how many huntsmen the petitioner employs. The petitioner appears to employ more than one Master Foxhunter, suggesting it may also employ more than one huntsman. In addition, the record is absent sufficient evidence that the petitioning club has a distinguished reputation. Even if we accepted the petitioner's assertion that by increasing the performance and prestige of the petitioning club, the beneficiary has played a leading or critical role for an organization with a distinguished reputation, this is only one criterion.

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

Lt. Col. Dennis Foster, executive director of MFHA, asserts that the beneficiary's compensation offer "is comparable to that offered for the same position as other hunts in North America." In his request for additional documentation, the director noted that a salary "comparable" with other huntsmen in the United States was not evidence that the beneficiary was one of the top huntsmen in the United States. In response, counsel asserts that the salary information was provided as an explanation for the beneficiary's low salary, not as evidence that the beneficiary meets this criterion. The director concluded that the beneficiary does not meet this criterion. Counsel does not challenge this determination, and we concur with the director.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a huntsman 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 indicates that the petitioner shows talent as a huntsman, but is not persuasive that the petitioner's achievements set him significantly above others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Finally, we concur with the director that the unavailability of trained huntsmen in the United States is an issue under the jurisdiction of the Department of Labor and, thus, is not an issue in these proceedings.

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.