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Immigration and Naturalization Service

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



File: WAC 01 242 58532 Office: California Service Center

Date: OCT 29 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, California 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 petition, filed on April 30, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a jockey. 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.

The Service regulation at 8 C.F.R. 204.5(h)(5) states, in pertinent part:

...the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

In the decision denying the petitioner, the director stated: "It should be noted that establishing yourself as a top amateur jockey is not sufficient, you must establish that you are one of the very top jockeys, amateur and professional." The director also noted: "The evidence indicates that you were one of the top amateur jockeys in Spain and that you won many amateur races... The field of horse racing cannot be divided up into professional and amateur categories. You must establish that you are one of the top jockeys overall."

On appeal, counsel argues:

Although the races were technically categorized as "amateur" competition, this in and of itself should not preclude the [Service] from finding that [the petitioner] possesses "extraordinary ability" in the field of horse racing. As stated in the petition, [the petitioner] is above the weight limit to be able to compete as a "professional" jockey. And for this reason alone, he competes as an "amateur jockey." His long list of honors, prizes and accomplishments show that he is nevertheless a jockey of "extraordinary ability."

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, 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.*

The petitioner submits a letter, dated March 26, 2002, from [REDACTED] President, [REDACTED]. He states:

[REDACTED] was founded in 1955 by a handful of enthusiastic amateur riders. The founding members were [REDACTED]. Many nations have joined [REDACTED] since 1955 and today the membership consists of 22 countries...

The main purpose of [REDACTED] to promote international races for amateur riders. [REDACTED] organizes two World Championships, one confined to gentlemen riders, comprising approximately 60 races run in different countries in Europe, North America, Asia and Africa. World Championship races for gentlemen riders are run on the flat as well as over jumps...

The World Championship races are run at some of the most prestigious racecourses in the world such as [REDACTED] in [REDACTED]. World Championship races organized by FEJENTRI receive first-class media coverage world-wide.

\* \* \*

[REDACTED] can confirm that [the petitioner] was representing Spain to ride in the World Championship of Gentleman Riders with the following results:

- 1994 [The petitioner] was Vice-Champion of the [REDACTED] Vermeil Spur)
- 1994 [The petitioner] also obtained the Silver Spur for the greatest number of points in flat races
- 1995 [The petitioner] won for a second time the Vermeil Spur (Vice Championship) and the Silver Spur for the greatest number of points in flat races

In 1996 he was awarded the Bronze Medal in the [REDACTED] World Championship. In the same year he won the [REDACTED] (2400 meters)

In 1997 [the petitioner] took part in ten races in the [REDACTED] World Cup Championship with five places.

From 1994 to 1997 [the petitioner] won 9 races in the [REDACTED] World Cup Championship.

The petitioner also submits evidence that he thrice won the [REDACTED], a derby for gentleman amateur riders, held at [REDACTED] in England. In describing one of the petitioner's victories, an article in a leading English newspaper, *The Daily Telegraph*, states that the petitioner swept to an "easy win on the Queen's horse in the Amateurs' Derby at Epsom" and confirms that the petitioner carried "the Queen's colors."

We concur with the director's assertion that the petitioner's amateur awards do not reflect achievement at the highest level of competitive horseracing. The significance of the gentleman rider awards, however, and the degree of media attention that they received, do reflect their national and international recognition within the sport of gentleman horseracing.

While the above awards would be sufficient to satisfy this criterion, we cannot ignore the complete absence of awards won by the petitioner subsequent to 1998. The statute and regulations require the petitioner's acclaim to be sustained, and the petitioner has not shown that he has remained a successful competitive jockey from 1998 until the time of filing the petition in April, 2001.

*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 several newspaper and magazine articles that mention his victories as an amateur rider from 1993 to 1996. The articles submitted appear in major newspapers and sporting magazines devoted to horse racing. The evidence submitted under this criterion, however, does not show that the petitioner has attracted the sustained attention of major national or international sporting media subsequent to 1996.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

Counsel argues that the petitioner satisfies this criterion by winning "races for the [redacted] [redacted] In addressing the director's denial, counsel inquires: "Is the [Service] taking issue with the suggestion that the [redacted] has a distinguished reputation?"

We certainly do not dispute counsel's assertion that the [redacted] has a distinguished reputation. The issue here not the Queen's reputation, but, rather, the specific organization the petitioner claims he represents. For example, the petitioner has not provided information to show that he is a regular rider for the Queen's stables. The petitioner has not shown that he has performed a leading or critical role for the entire English monarchy. The letter from [redacted] President [redacted] specifically states that the petitioner was representing Spain from 1994 to 1997. While [redacted] herself certainly fulfill a leading or critical role for the English monarchy, an amateur jockey who was never employed directly by the Queen would not. Other than the petitioner's participation in the Moet & Chandon Silver Magnum derby at Epsom Downs once a year during part of the 1990s, it has not been shown that the petitioner regularly competes on the Queen's behalf, is the only jockey to carry her colors, or that he was specifically chosen by the Queen.

Counsel cites an article appearing in *The Sporting Life* (1996) which states: "The royal dream has finally been realized. The Queen has won the Derby at Epsom- albeit the amateurs' version." A professional jockey asserts that the petitioner was "Queen Elizabeth's favorite rider." The petitioner, however, provides no evidence linking his selection as jockey directly to the Queen or the Royal Family. Instead, the petitioner appears to have been selected by the English trainers of the horses he rode [redacted]. For example, an article appearing in *The Times* (1993) states: "...John Sutcliffe, trainer of the winner, had tried to book [redacted] the former Irish amateur champion jockey." The article quotes [redacted] as saying: "...there was already an Irishman in the race, so I got [the petitioner] instead." Thus, it has not been shown that

being booked to ride the Queen's horses at a few amateur horse racing events represents a leading or critical role for the English monarchy.

Beyond the above criteria, the petitioner submits a witness letter from [REDACTED] who describes himself as a "professional jockey." [REDACTED] states that he has won the Preakness (1986) and placed second in the Kentucky Derby (1997, 1998 and 2000). [REDACTED] further states:

I met the petitioner while riding at the same race tracks throughout Europe and North America. I have been witness to his capacity as a jockey and I would consider him one of the greatest jockeys in the world, professional or otherwise... It is a shame that his body weight exceeds the 110 pounds needed to compete professionally. Otherwise, he would definitely be one of the most successful jockeys in the world. But because of his body weight and size, he can only be one of the greatest amateur jockeys in the world. The petitioner is known worldwide for his award championships...

The above letter is from an impressive expert whose opinion is important in the sport of horse racing. Reputation by association, however, cannot suffice to establish that the petitioner himself enjoys sustained national or international acclaim as a top jockey. While the petitioner has attracted the favorable attention of [REDACTED] a simple comparison of [REDACTED] achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment that places him at or near the top of his field. [REDACTED] has demonstrated "professional" achievements that far exceed those of the petitioner in the sport of horseracing. The assertion that the petitioner "would definitely be one the most successful jockeys in the world" were it not for his body weight is entirely speculative and cannot meet the extremely high threshold of extraordinary ability.

Furthermore, there remains the separate statutory requirement at section 203(b)(1)(A)(ii) that "the alien seeks to enter the United States to continue work in the area of extraordinary ability." The petitioner's intention to continue amateur racing is not in dispute; the record shows that the petitioner has recently been invited by the Amateur Riders Club of America to participate in an amateur racing event in New York. More relevant is the issue of whether employment as a jockey will be the petitioner's primary occupation and source of income. Because the petitioner seeks an employment-based immigrant classification based on his jockey skills, it is reasonable to require evidence that the petitioner has been and will continue to support himself principally as a jockey and/or through competitive prize money (rather than competing in his spare time while supporting himself through unrelated employment). We cannot ignore letters in the record from the Presidents of [REDACTED] and the Amateur Riders Club of America which indicate that participation in their events does not constitute employment. [REDACTED] states:

The best amateur riders of each member country qualify to participate in the World Championships... They are all "amateurs" and they do not receive any fee for riding in races. Amateur riders competing in [REDACTED] World Championship races come from varied backgrounds and all have a full time profession.

[REDACTED] of the Amateur Riders Club of America states: "ARCA is a non-profit amateur sports club in line with the fundamental amateur status of all riders and clubs associated with [REDACTED]. These riders have outside professions and compete for the pure pleasure of sport."

The petitioner in this case seeks an employment-based visa. The evidence now in the record fails to show that the petitioner has been and will continue to support himself primarily through his skills as a competitive jockey. "Compet[ing] for the pure pleasure of sport" fails to satisfy the statutory requirement at section 203(b)(1)(A)(ii) of the Act.

On appeal, counsel has not addressed the director's finding that the petitioner had offered no evidence to show that he had "ridden in any major races in the past five years." The statute requires the petitioner to demonstrate "sustained national or international acclaim." While the petitioner has submitted a statement on appeal claiming that he won two races in 1998, he has offered no first-hand evidence to support this claim. Even assuming the claim to be true, the petitioner has offered no evidence of his sustained acclaim in horse racing after 1998.

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 seeks to enter the United States to continue work in the area of extraordinary ability. The petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. Furthermore, the petitioner has not shown that he will obtain primary employment as a jockey in the United States.

Review of the record does not establish that the petitioner has distinguished himself as a jockey/amateur rider to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.