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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.
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Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: Nebraska Service Center Date: 17 SEP 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, 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.

On appeal, counsel asserts that the petitioner's qualifications make him eligible for the national interest waiver, a waiver relevant only to a separate classification.

On the petition, the petitioner checked the classification "alien of extraordinary ability." The accompanying letter from counsel indicated that it was in reference to:

I-140 - Immigrant Visa Petition and Request for ["National Interest Waiver" by [the petitioner] as an individual of "Extraordinary Ability" in athletics (Employment-Based Preference Category: EB-1)

The above statement is internally inconsistent. While an alien of extraordinary ability is a first preference (EB-1) classification, it requires no labor certification. As such, a waiver of the labor certification in the national interest is irrelevant. The brief then goes on to discuss the criteria for aliens of exceptional ability, a second preference (EB-2) classification under Section 203(b)(2) of the Act. Second preference classification normally requires a labor certification, although that requirement may be waived in the national interest.

Relying on the classification indicated on the petition and the "EB-1" language in counsel's brief, the director sent a request for additional documentation regarding the extraordinary ability classification. In response, counsel did not contradict the director. Rather, counsel asserted that the petitioner met some of the criteria relating to the EB-1 classification. Thus, despite counsel's apparent confusion, we find that the director properly adjudicated the petition as one seeking classification as an alien of extraordinary ability.

On appeal, counsel once again raises the concept of "national interest waiver." As stated above, this concept has no relevance to the classification sought by the petitioner. Counsel does, however, assert that the petitioner has "risen to the top of his field" and is "equal to a Nobel finalist." Counsel also references congressional intent "to obtain the best in sports, arts and sciences." These comments are more relevant to the extraordinary ability classification. Thus, counsel does not appear to be arguing that the director adjudicated the petition under the wrong classification. Rather, counsel seems to be confusing two separate classifications: aliens of *extraordinary* ability under Section 203(b)(1)(A) of the Act and aliens of *exceptional* ability under Section 203(b)(2) of the Act. These classifications, while they sound similar, have vastly different evidentiary requirements as set forth in 8 C.F.R. 204.5(h) for aliens of extraordinary ability and 8 C.F.R.

204.5(k) and Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), for aliens of exceptional ability seeking a waiver of the labor certification in the national interest.

In light of the above, we concur that the director properly adjudicated the petition under the classification indicated on the petition, aliens of extraordinary ability, and we will review that decision under the law and regulations relating to that classification and only that classification.

We also note that counsel asserts on appeal that he will send a brief and/or additional evidence to this office in 30 days. Counsel dated the appeal February 20, 2002. As of this date, six months later, this office has received nothing further. As such, the appeal will be adjudicated on the evidence in the 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

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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). 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a track and field coach. 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, he 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 submitted letters from two athletes he has coached, Bogdan Tudor and Elisabeta Anghel, asserting that under his tutelage, they have won national championships, set national records and competed in the Olympics. Traian Badea, General Secretary of the Track and Field Romanian Federation, and [REDACTED] the Technique Director of the same federation, confirm this information. [REDACTED] also confirm that the petitioner was named in the coaches' "Hall of Fame" in Romania, entered into a "Golden Book of Coaches" and awarded other diplomas. The petitioner, however, failed to submit the diplomas allegedly awarded to him, or any evidence of his admission to and the significance of the Romanian Coaches' Hall of Fame or the Golden Book of Coaches.

The director noted the lack of corroborating evidence of these claims but concluded that the petitioner met this criterion based on the "official" press releases from U.S. universities. While we do not question the credibility of the universities that apparently printed what appear to be press releases relating to the petitioner, there is no evidence they have first hand knowledge of the information included in those releases. Even if we concurred that the petitioner met this criterion, for the reasons set forth below, the petitioner has not established that he meets more than two criteria.

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 asserted that the petitioner is a member of the Romanian Athletic Federation, the National Commission of Biomechanics, the Track and Field Methodology Commission of Romania, and the Psychology Commission with the National Academy of Physical Education in Romania. Counsel further asserted that the Romanian Athletic Federation "recognized" the petitioner as an outstanding athlete and coach in 1993. The record contains no evidence of these memberships or the requirements for membership in these organizations.

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 submitted a newspaper article in a local Marquette, Wisconsin paper and another article in the *DePaulia*. Both articles appear to be in local papers, not major media. In addition, while the articles both mention the petitioner, the articles are not specifically about him, but about the college team for which he is an assistant coach. Finally, we concur with the director that the

brief biographical notes about the petitioner which appear to be press releases from the universities where he worked are not published material in major media.

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.

Counsel asserts that the petitioner meets this criterion based on his coaching. Judging the work of the athletes one coaches is inherent in the duties of a coach, and is not reflective of national or international acclaim.

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

The petitioner submits several letters from students and fellow coaches who provide general praise of the petitioner's coaching skills. 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.

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

Counsel and one of the petitioner's references assert that the petitioner has authored a book. The record contains no evidence to support this assertion or of the book's significance.

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 the petitioner meets this criterion based on his coaching for two Olympic teams in Romania. We concur.

Finally, the director noted that since 1997, the petitioner has worked as an assistant coach at U.S. universities and questioned whether the petitioner had sustained any acclaim he might have had in Romania. On appeal, counsel asserts that petitioner's current position has "no materiality" to his eligibility. The regulations require "sustained" acclaim. As such, the petitioner's acclaim at the time of filing is very material to his eligibility. While the petitioner has been in the United States since 1997 he has failed to demonstrate that he has sustained any acclaim he might have had during the four years between his arrival in the U.S. and the date of filing.

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 track and field coach 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 track and field coach, but is not persuasive that the petitioner's achievements set him significantly above almost all 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.

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.