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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: WAC 01 230 50932 Office: California Service Center Date: AUG 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office 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 that he has earned 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 he has sustained national or international acclaim at the very top level.

This petition, filed on April 26, 2001, seeks to classify the petitioner as alien with extraordinary ability as a basketball handler. Information provided by the petitioner states:

> [The petitioner] is the founder and director of [redacted] He attended Grand Canyon University in Phoenix, Arizona, where he also played varsity basketball. Currently, [the petitioner] travels around the country doing special clinics, camps, and workshops on individual skills development. He uses his amazing ball-handling demonstrations to show his clients that they too can become better athletes with proper practice.

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 documentation showing his inclusion in the Guinness Book of World Records for dribbling six basketballs simultaneously for one minute (2000) and for making 38 lay-ups in one minute while juggling three basketballs (2001). Certificates and other documentation from the Guinness World Records Entertainment Company shows that the petitioner has held previous world records in these two ball-handling activities.

We reject the petitioner's claim that his four certificates issued by the Guinness Book of World Records would qualify as nationally or internationally recognized "prizes or awards" for athletic excellence. Inclusion in a book of this size, with such a miniscule portion devoted to the petitioner, appears more akin to a comprehensive listing of entertaining facts than a national or international prize or award for excellence accorded to only an elite few. The petitioner submitted promotional material from Guinness World Records stating:

> You might not be able to run as fast as [redacted] or sell as many records as [redacted] but everyone can set a record, either as an individual or as a part of a team. Why not start a collection? It needn't be expensive: our database has records for collections of buttons, bus tickets, and bottle caps. Or you could get together with friends and try to break the record for the longest paper clip chain or the biggest group hug. Why not set a brand new record? Everyday brings suggestions for new record categories and we try to find ways of accepting as many of these as possible.

The information provided further states that "all record-breakers receive a certificate" of acknowledgement. Rather than submitting evidence to establish the degree of national or international stature accorded to his individual certificates, the petitioner has instead offered only general information about the organization that published his world records. It is noted that the petitioner's two Guinness World Records appear on the same page as numerous other records. Some examples of other records appearing on the same page as the petitioner's records include the following:

> Most Fouls in NBA (National Basketball Association) Career: [redacted] (4,657)
>
> Highest Score in College Basketball: Troy State won over De Vry Institute 258 to 141

> Most Three-Point Shots by a basketball team in one match: The Garret Academy high school boys' varsity team made 32 three-point shots

The above sampling of records included in the Guinness Book of World Records (2003 edition) clearly demonstrates that holding one of its records does not necessarily constitute a national or international prize or award for excellence in one's field of endeavor. For example, committing the greatest number of fouls is not indicative of athletic excellence. Similarly, it is noted that De Vry Institute's basketball team holds a Guinness World Record despite losing the game in which the record-setting combined score occurred. We find that the petitioner's listing among record holders such as a high school varsity basketball team is not indicative of national or international acclaim in basketball. Finally, we note that the events where the petitioner set his world records were held at local (i.e., Grand Canyon University's gymnasium), rather than national or international level, sporting venues. The petitioner's world records will be further addressed under a subsequent criterion.

In sum, the petitioner has failed to establish that he has received basketball "prizes or awards" representative of significant national or international recognition.

> *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 petitioner submitted three form letters from Guinness World Records informing him of his success in setting a new record. Two of the more recent letters state:

> A certificate to commemorate [your] achievement is enclosed.
>
> Details of this record have been entered into our records database for potential use in future Guinness World Records publications and products. Although this certificate does not automatically guarantee an entry our managing editors will consider all new records for use as required.
>
> Once again welcome to the very select band of Guinness World Record holders!

One of the letters, signed by [redacted] references his individual membership number as 2888.

On appeal, the petitioner argues that the letters from Guinness World Records would satisfy this criterion. The evidence presented, however, does not support his assertion. We find that the petitioner's inclusion in a database of numerous Guinness World Record holders would not qualify as "membership in an association in the field for which classification is sought." In this case, the petitioner's field or sport is basketball handling. The petitioner's Guinness World Record "membership" was evaluated by the book's editors rather than by nationally or internationally recognized basketball experts. Furthermore, under the previous criterion, it was noted that an

individual could become a Guinness World Record member by constructing the longest paper clip chain on record or by committing the greatest number of basketball fouls in an individual career. Guinness' acceptance of individuals who commit such feats shows that outstanding achievement in basketball is not an essential condition for admission to membership.

In sum, the evidence presented does not establish that Guinness membership is limited to individuals with outstanding achievement in basketball or that the petitioner was evaluated by nationally or internationally recognized basketball experts in consideration of his membership.

> *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.*

We withdraw the director's finding that the published pieces about the petitioner in the *Arizona Republic* and the Guinness Book of World Records would satisfy this criterion.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted articles appearing in local publications such as the *Arizona Republic*, *East Valley Tribune*, *The Independent*, and *Phoenix Gazette*. It has not been shown that these local publications enjoy significant national distribution, or that the petitioner was regularly featured in major newspapers outside of Arizona or New Mexico.

The record also contains evidence showing that the petitioner's world records have been featured in the 1999, 2000, 2001, 2002, and 2003 editions of the Guinness Book of World Records. These editions each devote two sentences or less to the petitioner's records. For example, on page 418 of the 2000 edition, it states: "Most Balls Dribbled: [The petitioner] of Arizona has demonstrated the unique ability to dribble five basketballs – two with each hand. The fifth between his feet." We cannot conclude that the petitioner's limited entry into such a sizable tome would constitute qualifying published material about the petitioner and his work.

We find that the evidence presented fails to demonstrate that the petitioner has been the subject of sustained national media coverage.

> *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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, the petitioner must demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve accomplished professionals in the petitioner's field.

In response to the director's request for evidence, the petitioner submitted evidence showing his participation in various basketball camps and clinics for youths. Our review of the petitioner's supporting evidence reveals no documentation to show that any of the events in which he participated involved judging accomplished professional coaches or players at the national or international level.

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

We withdraw the director's finding that the petitioner's evidence fails to satisfy this criterion. The record contains documentary evidence showing that the petitioner holds two world records for basketball handling. The petitioner has provided witness letters in support of the petition attesting to the significance of his records.

[redacted] a nine-time world record holder for spinning basketballs, states:

> As a basketball handler, I watched a half hour video tape of [the petitioner]... I watched one piece of the tape with great interest as [the petitioner] dribbled five then six basketballs at once, two in each hand and one with each foot. This was truly remarkable since for the longest time the record was only four basketballs and said to be unbreakable. He truly made a breakthrough in that field of ball handling as I did when I pushed the limits of spinning to new heights.

[redacted] states:

> I have been a juggler for 26 years. I have entertained audiences throughout the U.S. and Canada, including the White House, have been a finalist (top ten) in the International Juggler's Association individual championships six times, have served as a judge of these championships four times, and in 1996 was the Master of Ceremonies of these championships.
>
> * * *
>
> More pertinent to [the petitioner's] case is the fact that I specialize in juggling sporting goods: baseball bats, golf clubs, billiard cues, bowling balls and basketballs; and my invention of continuous dribbling of three and four basketballs is my own legacy to the art of juggling. I became aware of the petitioner when, in 1999, he broke my Guinness World

> Record, of dribbling four balls simultaneously, by dribbling five. He did it in a most creative and imaginative way by dribbling the fifth with his feet. He has since made another quantum leap by dribbling another ball simultaneous with his feet, for a total of six balls.... I may be the only other person besides [the petitioner] who can appreciate the imagination, analytical ability, dedication, persistence and strenuous practice required to achieve this.
>
> * * *
>
> I suggested to [the petitioner] that he try to break my other Guinness Record of shooting baskets while juggling three basketballs, and this had not been printed in the book for ten years. Within eight months he had broken my record of twenty baskets in one minute, and currently holds the record of 38, which will be printed in the 2003 Guinness Book, due out this month.

Throughout this proceeding, the petitioner has presented evidence and arguments related to events that came into existence subsequent to the petition's filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

[redacted] assertion that he "may be the only other person besides [the petitioner] who can appreciate" the petitioner's talents only strengthens the director's finding that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

That being said, we find that the petitioner's setting of world records in two ball-handling categories (records established by other basketball handlers prior to the petitioner's attempts) satisfies 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 record contains an unpublished instructional guide entitled "Guilt: A Success Through Practice" and a printed page from Powerhouse Basketball Camp's website stating that the petitioner authored "Tall, Tough, & Talented: A Complete Handbook for Individual Post Players." The record, however, contains no evidence showing that these works have appeared in a professional journal or a major publication. In order to satisfy this criterion, the petitioner must submit documentary evidence showing that his published material has been nationally circulated and favorably received.

> *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 in 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.

Documentation contained in the record shows that the petitioner has provided paid or volunteer services to organizations such as the Phoenix Sun's NBA Team, the Phoenix Mercury WNBA Team, the Mesa Family YMCA, the DARE (Drug Abuse Resistance Education) program, local schools, and various basketball camps and clinics. For example, a letter from Felisa Israel, Director, NBA Events and Attractions, and formerly the Phoenix Sun's Director of Entertainment, states that the petitioner "provided ball-handling demonstrations for the pre-game shows at America West Arena's Plaza and other functions like Phoenix Sun's and Phoenix Mercury community related events, fundraisers, etc."

While it might be successfully argued that some of the organizations for which the petitioner has performed enjoy distinguished reputations, the petitioner's activities for those organizations would not constitute a leading or critical role. The record shows that the petitioner provided occasional entertainment and instructional services on behalf of the above organizations; however, there is no evidence to suggest that he played a sustained leading or critical role, particularly when he was not a direct employee and his services were only voluntary, temporary, or contractual. The record contains several letters from individuals employed by the organizations listed above, but the information that they provide fails to establish that the petitioner has ever supervised or overseen other individuals within their organizations. Further, the record does not indicate that the petitioner has consistently exercised substantial control over creative or financial decisions executed on behalf of those organizations.

On appeal, the petitioner submits evidence showing that he was taped in September 2002 for a *Ripley's Believe It or Not* episode "expected to air" on the TBS network in early 2003. New evidence that did not exist as of the petition's filing date cannot retroactively establish his eligibility as of that date. *See Matter of Katigbak, supra*. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts.

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. In this matter, the petitioner has failed to demonstrate that he meets at least three of the regulatory criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. 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.