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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: WAC 02 063 51314 Office: CALIFORNIA SERVICE CENTER Date: JAN 17 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: SELF-REPRESENTED

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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for 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 to classify the beneficiary 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.

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 CFR 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 CFR 204.5(h)(3). The relevant 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.

The petitioner is a "bicycle sales organization" which has a sponsorship contract with the beneficiary. Doug Martin, the petitioner's vice president of Marketing, states:

> [The beneficiary] is a world-class athlete of superior skills and fitness and is widely considered among the world's top 5 riders in his discipline. He is the 2001 and current ESPN X-Games and NBC Gravity Games champion. He is also a former

winner at the World Championships and a multiple elite-level contest winner. He has competed and won in pro/elite competitions throughout the world.

The regulation at 8 CFR 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, in the initial submission, did not specify which criteria it claimed to have met, but the evidence submitted falls under 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.

Scott Hanley, director of Sports and Competition Event Creation and Management for ESPN, Inc., states that the beneficiary "is considered one of the premiere bicycle stunt riders in the world today. . . . [He] was invited by ESPN to compete in the world's premiere action sports events, the 2001 Summer X Games, this past August. He won the gold medal in that contest, earning an automatic invite to the 2002 X Games next August."

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.

Doug Martin asserts that the beneficiary "has appeared on national and international TV, and in print media." The beneficiary was the subject of a profile and interview in the January 2002 issue of *Transworld BMX*, a publication devoted to BMX bicycle sports. The article indicates that the beneficiary "won the two highest-profile dirt contests of the year, and in the course of about two weeks, made more than most people make in two years."

In response to a request for further evidence, the petitioner has submitted a videocassette showing television coverage of competitions in which the beneficiary has participated. Television coverage of competitions is not, in itself, sufficient to establish media attention, because generally every competitor at such an event is shown. More significant is the content of the coverage. In NBC footage from the Gravity Games, a commentator refers to the beneficiary as "a rider that has captured everyone's imagination here." When the beneficiary completes a 360 back flip, the commentators and spectators react with tremendous enthusiasm; the commentator indicates that the beneficiary's winning move is virtually unprecedented in a major competition. Less persuasive is footage from MTV which alternates between footage of various stunt jumps and a simultaneous live performance by a rock band. In the MTV footage, the beneficiary is simply one of several stunt riders, present essentially as a complement to the musical performance.

The director denied the petition, stating that the petitioner has satisfied the criterion pertaining to media coverage, but that the petitioner has not established the significance of the beneficiary's

medals and that the record, as a whole, does not show that the petitioner has demonstrated the beneficiary's sustained acclaim by satisfying at least three of the ten criteria listed at 8 CFR 204.5(h)(3).

On appeal, the petitioner submits several new exhibits taken directly from the Internet. Doug Martin asserts that the beneficiary "is globally recognized as one of the world's top BMX Dirt riders and is ranked top 3 in the world," and that the newly submitted evidence satisfies the two previously claimed criteria (pertaining to prizes and media coverage) as well as four additional criteria.

Additional interviews reinforce the finding that the beneficiary has earned national media coverage. Because we concur with this finding, a detailed discussion of the new evidence is unnecessary.

With regard to the beneficiary's prizes, the record contains numerous references to the X Games and the Gravity Games, confirming both that the petitioner won events at those competitions and that they are high-profile national competitions. A profile of the beneficiary at www.bmxreview.com lists the beneficiary's competition record, and separately from that, in a section for basic biographical information, includes "Total X-Games Medals," singling out that particular competition. (The same site ranks the beneficiary #2 in the "Bicycle Stunt Dirt" category.) Because both the X-Games and the Gravity Games are shown by major national television networks, the tournaments are perhaps the most highly exposed competitions in the sport. The petitioner's gold medals at both events in the same year readily satisfy the criterion pertaining to nationally recognized awards.

The petitioner submits an article, dated May 2, 2001, indicating that the beneficiary set "an officially recognized Guinness World Record" with a jump in Leipzig, Germany. The record contains no documentation from Guinness to verify this claim, and the article is actually a press release issued by the petitioner. The reference to a world record is, therefore, essentially an uncorroborated claim by the petitioner rather than a documented achievement. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

> *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.*

Under this criterion, the petitioner shows that the beneficiary is on a list of participants in the then-upcoming 2002 Gravity Games, and a list of nominees for the ESPN Action Sports and Music Awards. Neither of these constitutes membership in an association. Furthermore, this documentation dates from well after the petition's filing date and thus cannot retroactively establish eligibility, if the beneficiary was not already eligible as of the filing date. *See Matter of*

Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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

The petitioner asserts, without elaboration, that the beneficiary had a "starring role in [a] major BMX video." The record indicates that the beneficiary was one of at least 18 riders shown in issue 4 of *Transit BMX Video Magazine*, which is evidently a periodical issued in the format of a video rather than in print. An appearance of this kind seems to be much more akin to media coverage (a criterion already satisfied) than a leading or critical role for a distinguished organization.

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

The petitioner submits documentation showing that the beneficiary was slated to compete "for a share of the $250,000 Vans Triple Crown of BMX purse" at a world championship competition in North Carolina in May 2002. This documentation does not show how much of the purse the beneficiary actually won, even though the championship took place two months before the filing of the appeal. The materials establish only the total prize money to be divided among an unspecified number of winners; they do not show how much the beneficiary received. Also, as noted above, this event took place well after the petition's filing date.

Other documentation indicates that the 2001 Gravity Games, in which the beneficiary had won a gold medal, had "prize money totalling $1,000,000." As above, this is an aggregate figure, with the money divided among several winners; the beneficiary did not win a million dollars in this competition. Also, prize money is not salary or remuneration for services, because payment is contingent not on participation, but on winning. Money that the beneficiary has won in competition falls under the heading of prizes and awards, a separate criterion that the beneficiary has already satisfied. In terms of remuneration for services, we note that the petitioner has a contract with the beneficiary, and the beneficiary is presumably paid through the arrangements in that contract. The petitioner, however, neither provides the contract nor discloses the amount it pays to the beneficiary. The petitioner could have satisfied this criterion if the petitioner had shown that the beneficiary is among the highest-paid athletes in his sport through endorsements or other contracts, but the record contains no such evidence.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The petitioner asserts that the beneficiary's appearance as the subject of a 40-second "PocketCinema" clip at www.cinemaelectric.com satisfies this criterion. This claim fails because it cannot suffice simply to show that the beneficiary appears in a motion picture; the regulatory language clearly calls for evidence of commercial success. The petitioner has shown

only that the footage is available for viewing. Also, the use of forty seconds of footage in this way does not place the beneficiary under the aegis of the performing arts.

As shown above, the petitioner has readily satisfied two of the criteria at 8 CFR 204.5(h)(3), pertaining to prizes and published material about the alien. Nevertheless, by regulation, the petitioner must submit evidence to satisfy at least three of the criteria and demonstrate that the beneficiary had sustained national or international acclaim as of the petition's filing date. Other criteria appear to be applicable to the beneficiary's field, but the petitioner has either failed to support claims under those criteria (such as remuneration for services) or else has not mentioned them at all (such as original athletic contributions of major significance in the field). Some key claims, such as the assertion that the beneficiary holds a Guinness World Record, have no evidentiary support and thus carry no weight. Clearly, the beneficiary has won substantial recognition and has enjoyed significant success in his sport, but the Service has no discretion to disregard the regulations in favor of more lenient alternative requirements. Although the petitioner has indeed come close to establishing the beneficiary's eligibility, the evidence in the record is insufficient to meet the mandatory threshold. 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.