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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B2



FILE:



EAC 04 120 54837

Office: VERMONT SERVICE CENTER

Date: DEC 16 2005

IN RE:

Petitioner:



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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, submits a statement and additional evidence. For the reasons discussed below, we concur with the director's ultimate conclusion. Further, we find that the petitioner has not established that he intends to "work" in his area of claimed 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). This petition seeks to classify the beneficiary as an alien with extraordinary ability as a competitor in table tennis, track and field competitions and marathons. Other than the marathons, the petitioner's competitions have been limited to handicapped competitions and the petitioner's claims rely on narrowing his field of endeavor to handicapped athletes. 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 the following 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.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

- (ii) 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;
- (iii) Published material 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

Initially, the petitioner submitted certificates of participation in athletic events, certificates of employment, undated newspaper articles in unidentified foreign newspapers and photographs. The certificates reflect that the petitioner participated in the following athletic events:

1. The 1986 SOLNA SPOLN Tennis Table Championship in Stockholm, Sweden;
2. The 1991 African Games, Barcelona Olympic Elimination (the petitioner earned a bronze medal);
3. The 1993 International Robin Hood Games in Nottingham, England; and
4. The 2003 New York Marathon;

The petitioner reached the 16th level at the SOLNA SPOLN Tennis Table Championship and won a bronze medal at the African Games, the only documented prize or award. Additional certificates reflect that the petitioner trained athletes at the following clubs:

1. Helal Elram Club from 1998 through at least 1999;¹
2. Alexandria Sporting Club from 1998 through at least 1999;²

Other certificates reflect that the petitioner completed a trainers basic course in 1998 and three leaders preparation courses in 1999. Finally, the petitioner received a "Diplomat of the Artistic Commerce Department in Accounting with acceptable Grade" in 1993, which does not appear related to his athletic abilities.

In response to the director's request for additional evidence of eligibility, the petitioner submitted evidence of his membership in the Achilles Track Club and the National Disability Sports Alliance (NDSA) and his participation in NDSA's National Sports Festival in New London, Connecticut in June 2004 and the 2004 New York Marathon in November of that year. The petitioner also submitted a news article in an unidentified foreign newspaper reporting his results at the National Sports Festival. At that festival, the petitioner won first place in the 100 Meters, Field Shot and Discus and second place in bowling. A review of the results, however, reveals that each event had several divisions divided by gender, age (including both "adult" and "masters") and "class." The record does not establish how many athletes competed in the petitioner's class (CP6) and age division (adult) in each event he won. The petitioner finished 36,536 out of 36,544 in the New York Marathon. Finally, the petitioner submitted letters from [REDACTED] of the Salaam Club of New York, Sinem Gur of MSI Net, Inc. and [REDACTED] of USA Insurance. All three letters include the same verbiage:

This is to certify that [the petitioner] is one of the best athletes (handicapped) in the world.

I have personally seen him perform and he is the epitome of human achievement and courage, as he can show the true value of the human spirit with his inner strength to overcome his personal hurdles.

The director concluded that the petitioner had failed to submit objective evidence of his individual sustained national or international acclaim. On appeal, the petitioner submitted a new letter from Achilles asserting that the petitioner is one of only "30+ individuals in the world with his type of disability to ever complete an entire marathon." The petitioner also submitted a character reference from [REDACTED] his Social Security Statement reflecting earnings of less than \$5,500 in 2000, 2001, 2002 and 2003 and refund checks from the State of New York.

The statute requires extensive documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate sustained national or international acclaim. The petitioner is a talented athlete, especially given his disability, but the record does not reflect that he has attained any national acclaim for that ability. Specifically, the petitioner has not submitted documentation sufficient to meet any of the ten criteria.

The petitioner's only awards or prizes are the bronze medal at the 1986 SOLNA SPOLN Tennis Table Championship in Stockholm, Sweden and the awards at the 2004 National Sports Festival. The 2004 festival, however, occurred after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, at

¹ The certificate indicates that the petitioner performed these services "up to date" and appears to be dated in 1999.

² The certificate indicates that the petitioner performed these services until "the present time" and appears to be dated in 1999.

the time of filing, the petitioner had won a single award in 1986, which is not evidence of sustained acclaim in early 2004 when the petition was filed. Moreover, the record contains no evidence regarding the significance of this competition. For example, there is no evidence, such as national media coverage of the event, suggesting that the competition is nationally recognized. Even if we were to consider the 2004 festival, as stated above, the record contains no evidence of how many athletes competed in the petitioner's class and age group or other evidence of the festival's national recognition.

The petitioner did not submit any evidence regarding the membership requirements for the NDSA or Achilles. Thus, the petitioner has not established that these organizations require outstanding achievements of all of their members.

As stated above, the petitioner failed to comply with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) by providing the date of the published material. Moreover, without evidence of the publication in which those articles appeared, we cannot determine whether those publications constitute major media. Specifically, the record lacks evidence that the newspaper articles about the petitioner appeared in nationally circulated publications.

The remaining evidence does not relate to any of the above criteria in the field of athletic competition. While we acknowledge the significance of the petitioner's ability to complete the New York Marathon despite his disability, that accomplishment took place after the date of filing and cannot be considered. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, while impressive accomplishments, his completion of the 2004 race and participation in the 2003 race do not appear to have garnered the petitioner any acclaim.

Moreover, the record does not establish the petitioner's extraordinary ability as an athletic instructor. While the petitioner has completed courses in training athletes and has worked as a trainer, the record lacks evidence establishing the distinguished reputation of the clubs where he has worked or the success of his students.

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 handicapped athlete 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. Therefore, the petitioner has not established the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that he intends to "work" in his claimed field of extraordinary ability. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The classification sought is an employment-based classification. The statute requires that the petitioner be seeking to enter the United States to continue to "work" in the area of extraordinary ability. The regulation at

8 C.F.R. § 204.5(h)(5) requires evidence of an intent to continue working in the petitioner's area of expertise, such as letters from prospective employers, prearranged commitments or a statement from the petitioner detailing his plans to work in his field. The record does not contain such evidence. While we acknowledge that marathon runners can earn a living in the field through prize money and endorsements, the petitioner submits no evidence that he has ever earned any prize money or that any company has expressed an interest in endorsing the petitioner's athletic career. Thus, the petitioner has not established his ability to make a living by competing as an athlete. While the record contains some evidence of the petitioner's employment as a trainer, he failed to submit the evidence required pursuant to 8 C.F.R. § 204.5(h)(5) establishing his intent to work in the United States as a trainer. Moreover, for the reasons discussed above, he has not established that training is within his athletic area of expertise.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.