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U.S. Citizenship
and Immigration
Services

B 2

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 02 2005

IN RE:

Petitioner:

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)

ON BEHALF OF PETITIONER:

[Redacted]

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

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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in athletics as a coach and consultant for an athletic shoe store operated by the petitioner. The petitioner initially submitted a letter from the beneficiary, documentation of the beneficiary's gold medal from the 1,500 meters race at the 1988 Olympics, an invitation addressed to the petitioner to meet with the Pope in 1995, a photograph of the beneficiary and the Pope, invitations for speaking engagements and a recommendation letter from the communications director of the International Association of Athletics Federations. The director found no evidence related to the beneficiary's accomplishments as a coach or consultant and determined that the record did not establish the requisite sustained acclaim and did not indicate that the beneficiary would continue working in his field. On appeal, counsel submits a brief and additional documents including a letter from the petitioner's president, [REDACTED] nine recommendation letters, two newspaper articles written by the beneficiary and a newspaper article about a meeting organized by the beneficiary. Counsel's claims and the

additional evidence do not overcome the substantive reasons for denial and we affirm the director's decision. The evidence submitted, counsel's contentions and the director's decision are addressed in the following discussion of the statutory and regulatory criteria relevant to the petitioner's case.

We first address the issue of the beneficiary's plans to continue working in the United States in his field. To grant classification as an alien with extraordinary ability, Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii) requires that the petitioner establish that the alien seeks entry into the United States to continue working in his or her area of extraordinary ability. In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in athletics so that he may continue working as a coach and consultant for the petitioner's athletic shoe store, which is affiliated with the New Balance company. The petitioner initially submitted no employment contract or other evidence that the beneficiary would continue working for the petitioner. The beneficiary's own letter focused on his independent charitable activities and only briefly mentioned his work for the beneficiary. The beneficiary stated:

After my retirement from active sports, I established a non-profit enterprise now called the [REDACTED] Educational and Training Center (PRETC). The Center is based in my hometown, Kapsabet, Kenya and it's responsible for identifying prospective student athletes who may be eligible to run and attend college in the United States, and other great countries. . . . To date PRETC has succeeded in assisting over 200 student athletes, each of who is taking technical degree courses that will in future uplift poor communities in Africa. I have also been giving motivational speeches to middle schools, high schools, athletic camps and Universities and Colleges across the US. . . . I am currently working for New Balance North Jersey as a consultant and coach for a group of elite runners and sports lovers in general.

On appeal, the petitioner explains that the beneficiary coaches runners and racewalkers sponsored by the shoe store and also gives motivational speeches at events organized by the petitioner. The petitioner states that the beneficiary's presence at the shoe store attracts champion runners who "request that [REDACTED] select their training and racing shoes for them." The petitioner does not clearly state what exactly the beneficiary does as a consultant, but praises the beneficiary as an extraordinary individual and credits him with the store's success. A recommendation letter from the sports journalist, [REDACTED] further explains that:

[i]t was probably a mistake to characterize [the beneficiary's] work as that of a "consultant." How would anyone demonstrate "extraordinary ability" as a consultant? Rather, [REDACTED] is his company's representative, in the best sense of the word – not a mere salesman, but a figure of great repute and achievement who brings respect and honor to the enterprise he represents through his quiet charisma.

Other documents in the record establish that the beneficiary has been working for the petitioner as a coach and consultant in O-1 nonimmigrant status since January, 2001. We find the evidence sufficient to establish that the beneficiary intends to continue working as a coach and consultant for the petitioner and thus satisfies section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii).

One-time achievement (that is, a major, international recognized award).

The record contains a photocopy of the beneficiary's Olympic gold medal and several documents affirm that the beneficiary was the gold medalist in the 1,500 meters race at the 1988 Olympics in Seoul. The director correctly

determined that the beneficiary's gold medal alone was insufficient to establish the sustained national or international acclaim requisite to classification as an alien with extraordinary ability. Olympic gold medals demonstrate that an athlete has reached the top of his or her field and may be sufficient to establish the requisite sustained acclaim if the athlete remains active in his or her sport. In this case, the beneficiary has retired from active sports. On appeal, counsel claims that the beneficiary has sustained his athletic acclaim through his coaching and consulting activities and cites the recommendation letters submitted on appeal. As discussed below, these letters do not sufficiently support counsel's claim.

In her decision, the director cited "prior decisions" of this office for the principle that "competitive athletics and coaching are not the same area of expertise." Our office has stated that an alien who seeks to enter the United States as a coach under the extraordinary ability classification cannot rely solely on past acclaim as an athlete. However, we have also held that given the nexus between competing and coaching, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. In this case, the record contains insufficient evidence to document the beneficiary's claimed work as a coach, let alone establish that he has garnered sustained national or international acclaim for his coaching.

The record contains four documents relating to the beneficiary's activities as a coach. A sidebar article in what appears to be a course catalogue for Mount Saint Mary's College in Maryland contains a photograph of the beneficiary and states "[redacted] recently returned to the Mount to become an assistant coach in track and field events and to obtain his MBA." The petitioner also submitted three recommendation letters that discuss the beneficiary's coaching. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility because they do not demonstrate that the alien's work is of major significance in his field beyond the circle of individuals with whom he has worked directly. Even if written by independent experts, recommendation letters solicited by an alien in support of an immigration petition carry less weight than preexisting evidence of major contributions that one would expect of an alien who has sustained national or international acclaim.

[redacted] Head Track and Field Coach at Mount Saint Mary's College, states that the beneficiary was a cross country coach for the college and heralds the accomplishments of two of the beneficiary's students. According to [redacted] one student finished second in the "NACC Cross Country championships and the other earned All American honors five times running for Mt. St. Mary's." [redacted] also states that "the International Governing Body for Track & Field (IAAF) commended [the beneficiary] for the success of his pupils at the 2000 Olympics. [redacted] was hired to coach athletes from Africa at the IAAF sponsored training camp." However, the record contains evidence to document only one of these accomplishments. A letter from [redacted] states that "[w]hen I was in college in Kenya, [redacted] recruited me to Mount Saint Mary's College. . . . He was my coach in Mount Saint Mary's and [redacted] University in cross-country. In 2001, I made a breakthrough in my running when I went to NCAA nationals and finished second." The petitioner's letter states that the beneficiary has coached several runners and racewalkers sponsored by the petitioner's shoe store who have won national championships for juniors and for athletes over 40 and over 70. One of these runners is [redacted] who states that she "just competed in the masters exhibition 800 meter event at the Olympic Trials and also am the 2003 Indoor Masters National Champion. My training requires the advice and input of Peter Romo [sic]. . . . I drive 45 minutes biweekly to have [redacted] go over my training and race preparation material. I would be extremely lost without him coaching me." The letters suggest that the beneficiary has had limited success as a coach, but the record contains no primary evidence of the

accomplishments of the athletes whom the beneficiary has coached. Accordingly, the record is insufficient to establish that the beneficiary's international acclaim as an Olympic gold medalist has been sustained as a coach. There is also insufficient evidence of the beneficiary's accomplishments as a consultant, as discussed below under the fourth and fifth criteria and the comparable evidence provision.

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

In addition to the Olympic gold medal, the record indicates that the beneficiary has won several other international and national running competitions, but contains no primary evidence of those awards or prizes. Prizes or awards won by athletes whom an alien has coached may provide comparable evidence of the alien's eligibility under this criterion pursuant to 8 C.F.R. § 204.5(h)(4), but the record in this case contains no primary evidence of any prizes or awards won by athletes whom the beneficiary has coached.

The record also contains a copy of a plaque reading "NCAA II Cross Country Hall of Fame. [REDACTED] 2003." The petitioner states that "[m]any of [REDACTED] awards are for his ability to run, but are enhanced by his character. This includes admission to the NCAA Hall of Fame, a prestigious and select body, which includes character as an important qualification." The record contains no independent evidence to support this claim or otherwise document the significance of the beneficiary's NCAA award. Accordingly, the beneficiary does not meet this criterion.

(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.

The record contains excerpts from two books and two trade publications that document the beneficiary's Olympic gold medal performance in 1988; an article entitled "Kenya's Olympics" from the November 1988 *New African* that contains a drawing and a photograph of the beneficiary; and a publication of Mount Saint Mary's College entitled "Mount Track '88-'89" that features photographs of the beneficiary at the Olympics and a short article listing his accomplishments as a runner. The record contains no evidence that these books and periodicals are professional or major trade publications or other major media. In addition, the articles all relate to the beneficiary's athletic achievements. The record is devoid of any published material concerning the beneficiary's work as a coach or consultant. The articles do not reflect the requisite sustained acclaim in the beneficiary's claimed field of expertise and he consequently does not meet this criterion.

On appeal, the petitioner submitted an article entitled "World Marathon Record Holder Visits Lyndhurst" published in the June 10, 2004 edition of *The Commercial Leader of Lyndhurst* that discusses the beneficiary's role in arranging a visit of the champion Kenyan marathoner, [REDACTED] to [REDACTED] New Jersey. This article was published six months after the petition was filed and consequently cannot be considered. The beneficiary's eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

(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 specification for which classification is sought.

Although coaching may establish an alien's eligibility under this criterion when it reflects the requisite sustained acclaim, the record in this case contains insufficient evidence of the beneficiary's work as a coach. The beneficiary's purported selection to coach athletes from Africa at the IAAF sponsored training camp (as stated in [REDACTED] letter) or the beneficiary's selection as a cross country coach for Mount Saint Mary's College might satisfy this criterion if those positions were adequately documented. Yet the record contains no primary evidence of either position or documentation that the beneficiary's selection as a coach for these two institutions reflects sustained national or international acclaim. Accordingly, the beneficiary does not meet this criterion through his work as a coach.

Several recommendation letters indicate that the beneficiary has also judged the work of others as a recruiter of Kenyan athletes for colleges and universities in the United States, work that has purportedly garnered sustained national and international acclaim. [REDACTED] IAAF communications director states that the beneficiary "is universally respected in our sport for his upright character and his quiet, effective work on behalf of young student-athletes in his native country, Kenya." [REDACTED] states that the beneficiary's "reputation here is nationwide. He has recruited over a hundred athletes now competing or graduated from colleges and universities in the U.S. His recommendation alone made it possible for them to attend our universities." [REDACTED] the 2001 second-place finisher at the NCAA nationals, confirms that he was recruited by the beneficiary. [REDACTED] states that his sister "is one of more than 200 Kenyan students [REDACTED] has helped to secure scholarships to further their education in American universities." John Manners, the sports journalist, states that "dozens of young men and women [the beneficiary] spotted and developed have gone on to college athletic careers of great distinction, running on scholarships that [REDACTED] helped them secure. One of his young protégés [REDACTED] won the World Indoor Championship at 1500 meters earlier this year in Budapest." [REDACTED] Director of Coaching Education and International Sports at Kennesaw State University in Georgia states that the beneficiary "has assisted me in recruiting young men and women to compete and for our track teams and to gain an education." [REDACTED] Track and Cross Country Coach at Central Arizona College explains that the beneficiary "called my office in 1996 to offer his assistance in the recruiting of Kenyan student-athletes. I did not know [REDACTED] at the time but knew who he was through his gold medal in the 1988 Seoul Olympics in track and field. . . . He has helped Central Arizona College recruit eight different student-athletes over a nine year period. All have been honor students, outstanding athletes, and GREAT people. Because of [REDACTED] direct involvement with us we have been National Champions in track and field twice, and twice in the sport of cross country."

Although the beneficiary's recruiting work arguably falls within his claimed field of expertise in coaching and consulting, the record contains no corroborative documentation of the beneficiary's work as a recruiter or the accomplishments of students he has recruited besides [REDACTED]. There is also insufficient evidence that the beneficiary's role as a recruiter has gained recognition in his field beyond those individuals with whom he has worked directly or who have personal knowledge of his accomplishments. Consequently, the beneficiary does not meet this criterion.

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

The record indicates that the beneficiary has made valuable contributions to the cultivation of young athletes in Kenya and their recruitment by U.S. colleges and universities. The beneficiary's work as a recruiter was previously discussed under the fourth criterion. The record also contains copies of two articles written by the

beneficiary that urge reform of the [redacted] Athletic Association (KAAA), but no documentation of the impact – if any – of these articles in the athletic field in Kenya.

Many of the recommendation letters submitted on appeal praise the beneficiary's charitable endeavors and his efforts to encourage the athletes he recruits to use their education to contribute to the development of their native country. [redacted] attests that as "a fellow Kenyan athlete [and] the current World Record holder in the marathon," he has been inspired by the beneficiary's athletic achievements and that the beneficiary's "community service in Kenya also inspired me to become involved in activities that help to benefit the world beyond athletics. I was recently appointed an Ambassador against Hunger by the United Nations World Food Programme." While the beneficiary's charitable work is clearly commendable, the record contains insufficient documentation of the beneficiary's exact activities and the impact of this work in his field. The evidence does not demonstrate, for example, that the beneficiary's charitable work is unique or original among former athletes, or that it has significantly influenced other track and field coaches and consultants. Accordingly, the beneficiary does not meet this criterion.

(vi) 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 copies of the aforementioned articles written by the beneficiary and urging reform of the KAAA. The articles were published in the January 5, 2002 edition of the *Saturday Nation*, which appears to be a Kenyan newspaper. The record contains no circulation or publication information about the *Saturday Nation* or any other evidence that would establish that the newspaper is a professional, major trade publication or a nationally circulated newspaper in Kenya. Consequently, the beneficiary does not meet this criterion.

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

To meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. In this case, the beneficiary has worked (and intends to continue working) as a coach and consultant for the petitioner's shoe store. The record contains no organizational chart or other documentation that would establish the beneficiary's exact position at the store, although he is clearly a highly valued employee. As the petitioner states:

I am the luckiest person in the world to have [redacted] working at our store. That has given us cache [sic] that has put a shoe store on the map, and made me (a non-runner) a luminary in the track and field community, that made our New Balance store the number 1 or 2 ranked New Balance store in the country (out of over 100) for the last three years, and has allowed us to put together a collection of national champion athletes that no other store can match.

Although the petitioner thus credits the beneficiary's presence with the store's success, the petitioner provides no corroborative documentation to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record is also devoid of any independent evidence that the petitioner's shoe store has a distinguished reputation.

The beneficiary states that he established the [REDACTED] Educational and Training Center (PRETC) in Kapsabet, Kenya, but the record contains no corroborative evidence that he had or continues to perform in a leading or critical role for PRETC. There is also no evidence of PRETC's reputation in the record. Accordingly, the beneficiary does not meet this criterion.

(ix) 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's Form I-140 indicates that the beneficiary would be paid \$962 per week. The director concluded that this salary "seems minimal for an individual of extraordinary ability caliber" and noted that the record contained no documentation of the beneficiary's present or past income. On appeal, counsel claims that the beneficiary "is in a relatively highly paid position for a franchised reseller of a major athletic company . . . [REDACTED] s compensated at a higher rate than many of the leaders in his field. . . . Although certain sports are very high profile and highly paid, others are not. Track and field is simply not an area that is rewarded in this way and it is not a reasonable assumption for the Service to make." However, the only evidence in the record to support counsel's claims is [REDACTED] letter explaining that "the overall decline in media attention given to track, particularly in the U.S., has caused a corresponding decline in the market value of the sport's stars." [REDACTED] opines that because the beneficiary is from Kenya, a country with so many "brilliant runners," his ability to command a high salary in his field is further limited. The record contains no evidence to corroborate [REDACTED] supposition.

On appeal, the petitioner states that the beneficiary is "worth a million dollars, but we aren't a highly capitalized entity." The petitioner further entreats us to not [REDACTED] for being an athlete who has never sold out to corporate greed Please don't make it wrong for a unique treasure to earn a living in a shoe store." We have noted the beneficiary's commendable charitable endeavors and our analysis of his eligibility under this criterion includes no judgment of the beneficiary as an individual. We also note that [REDACTED] statements regarding the limited economic clout of top track and field athletes are true, then the beneficiary would be better served by not claiming eligibility under this criterion. However, counsel claims that the beneficiary is actually "highly paid" for his position. Accordingly, we are obliged to discuss his eligibility under this criterion. The record contains no documentation of the beneficiary's income or other evidence to support counsel's claim that the beneficiary is "highly paid." Consequently, he does not meet this criterion.

Comparable evidence under 8 C.F.R. §204.5(h)(4).

We have also considered the documents submitted regarding the beneficiary's motivational speaking engagements and his purported meetings with the former [REDACTED] and [REDACTED] as comparable evidence of the beneficiary's eligibility as an athletic consultant. The record contains a letter addressed to the petitioner from [REDACTED] and dated August 1, 1995. The letter "officially invite[s] [the beneficiary] to the 'Recital' on priesthood." The letter states that the event will be held at the Vatican "in the presence of the Holy Father" and requests the beneficiary to "bring your personal witness regarding your esteem on the figure and ministry of the priest for about a minute and a half." The petitioner explains that the beneficiary was nominated as "representative World Athlete of the Year, a title conveying with it a meeting with the Pope, to be the ultimate diplomat and representative for all of the athletes of the world." but the invitational letter makes no reference to the beneficiary as "world athlete of the year" and no other documents attest to the beneficiary's receipt of that title. The record contains a copy of a photograph of the beneficiary with the former

Pope. This evidence indicates that the beneficiary once met with the former Pope, but it does not sufficiently establish that he attended the meeting as a spokesperson for world athletes. The petitioner also states that the beneficiary was “selected for a similar meeting with South African President Nelson Mandela,” but the record contains no documentation of that meeting.

The record also contains three documents related to the beneficiary’s motivational speaking engagements. A February 9, 1998 press release from Whitman College in Walla Walla, Washington announces that the beneficiary will give a talk entitled “Competitive Spirit, Determination, and Courage as Tools for Success.” An April 6, 2004 letter from [REDACTED] Executive Director of the Wise Choice Transitional Home in Philadelphia, invites the beneficiary to be a guest speaker at the Home’s “5th Annual Parkside Day at the Philadelphia Zoo.” [REDACTED] states that the beneficiary’s speech would have “a positive impact on our young people. Accomplished individuals, such as [the beneficiary], are always a beacon of hope to those with a vision to succeed.” However, the record contains no documentation that the beneficiary actually gave the invited talks at Whitman College and the Wise Choice Transitional Home’s event. Finally, an undated letter from [REDACTED] Cross Country and Track Coach for the [REDACTED] High School in Ramsey, New Jersey, states that he brought his cross country team to a camp in Rhode Island where the beneficiary was a featured speaker. [REDACTED] explains that the beneficiary gave two formal lectures and also spoke to the campers informally at lunch. The letter quotes some of the camp’s students including [REDACTED] who says “I’ve been at camp for each of the last two years and my highlight has been the speeches of [REDACTED] Peter has helped me with my running and also gave me incentive to go to Kenya and teach for six months starting in August.” This evidence indicates that the beneficiary has received three invitations to give motivational speeches and once gave lectures at an unidentified camp in Rhode Island on an unspecified date.

The beneficiary’s meeting with the former Pope suggests that he received some international recognition in 1995, nine years before the petition was filed. His speaking invitations and engagement indicate that he is an inspiring speaker with limited national recognition. However, the statute requires that an alien’s extraordinary ability be “demonstrated by sustained national or international acclaim” and that his or her achievements be recognized through “extensive documentation.” Section 203(b)(a)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i). The record in this case does not rise to that level.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the beneficiary won international acclaim as an Olympic gold medalist in 1988 and has since retired from sports, but now works as a coach and consultant for a shoe store and also engages in charitable activities. However, the record does not sufficiently demonstrate that the beneficiary’s past acclaim as an Olympic medalist has been sustained through his subsequent work as a coach or consultant. The record thus does not establish that the beneficiary is an alien of extraordinary ability.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.