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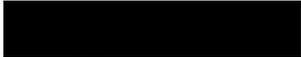
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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 21 2006

EAC 05 009 50647

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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 submits a brief. For the reasons discussed below, counsel does not overcome the director’s bases for denial.

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 regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. On appeal, counsel asserts that the evidence submitted to meet a given criterion need not individually establish extraordinary ability. Rather, by requiring evidence to meet at least three criteria, the regulations presume that evidence relating to three criteria in the aggregate is sufficient. According to the statute, the petitioner must show that he has sustained national or international acclaim at the very top level. Thus, while not every piece of evidence must individually establish national or international acclaim, the evidence must be at least indicative of or consistent with such acclaim if the statutory

standard is to have any meaning. Ordinary accomplishments in the field cannot become extraordinary simply by being combined.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an athlete. The petitioner currently competes in mostly 5- and 10-kilometer charity runs. 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.<sup>1</sup>

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

Initially, the petitioner submitted certification from the Byelorussian Athletic Federation confirming that the petitioner "is a winner and prizewinner of a number of super marathon races in Belarus as well as in Europe (Poland, Germany, France, and Netherlands.)" The certificate then lists the petitioner's rank in four races from 1997 through 2002, the highest finish being 22<sup>nd</sup> place. The record also contains two similar letters from [REDACTED] coach of the German national running team, and [REDACTED] coach of the Belarus National Team, listing several race results. While the director questioned the veracity of the letters based on their similarity, both letters are signed affirming the contents of the letters. Nevertheless, as conceded by counsel, the references are attesting to language that is not their own. Of more concern, both references assert that their opinions are based on a review of the petitioner's affidavit along with supporting documents. As such, neither reference is professing first hand knowledge of the petitioner's accomplishments.

A Swiss newspaper, *Biel Daily*, reports that the petitioner won the Biel Marathon in June 2000. The petitioner also submitted the official results for this race. An undated article in the same publication reports another win in presumably the same race. Also in 2000, the petitioner finished second in the FILA-Marathon. The photo caption for a June 2001 article in *Ultra-Marathon* on the 10<sup>th</sup> Swabian Alb Marathon reveals that the petitioner finished second in that race. The petitioner also provided the official results for this race, revealing that it took place in October 2000. An article on the 11<sup>th</sup> Swabian Alb Marathon in October 2001 published in the German magazine *Running*, reports the petitioner's third place finish in that race. The petitioner also submitted his certificate for this race. In 2003, the petitioner finished second in a 44 kilometer walking race in France. The petitioner competed in other European races and a mountain race in Alaska but finished below third place.

In addition to the Alaskan mountain race, the petitioner competed in several "half-marathons" and five and ten kilometer charity runs in the United States. All of these races appear local to the Northeast, with the list of runners showing nearly all participants from New Jersey or Pennsylvania or local to

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

New York, with nearly all participants from New York, New Jersey and Connecticut. The petitioner also competed in the Philadelphia and Baltimore Marathons, which drew participants from further away. The petitioner, however, only finished in 38<sup>th</sup> and 8<sup>th</sup> place, respectively.

The director noted that some of the petitioner's rankings were age-based and concluded that the petitioner had not established the national or international significance of the above races. On appeal, counsel asserts that races typically include overall and age-based placements and that it is not reasonable to require evidence of the significance of the race beyond the testimony of experts.

We acknowledge that the petitioner placed in the top three in several races overall, not simply in his age category. Counsel's remaining assertion, however, is not persuasive. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the awards or prizes be nationally or internationally *recognized*. It is the petitioner's burden to establish every element of a given criterion; we will not presume that a race is nationally or internationally recognized. In both their letters, [REDACTED] and [REDACTED] assert that the petitioner won "top awards at [the] world's top competitions that are unequivocally accepted as forums for the very best athletes." As stated above, however, both references appear to be relying on the petitioner's own affidavit. Neither reference explains which races were the most significant and why. For example, the races in the United States where the petitioner placed in the top three appear to draw racers almost exclusively from the Northeast. The record contains no information regarding the pool of competitors for the European races. Given this lack of information, the bare assertions of the petitioner's references are simply too vague.

Nevertheless, competitions that are nationally or internationally recognized typically garner national or international media coverage. As stated above, the Swabian Alba Marathon results were published in *Running* and *Ultra-Marathon*. In response to the director's request for additional evidence, counsel asserted that *Running* "is the major international publication in the sport." The unsupported assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no circulation data for *Running*. Without evidence that the races in which the petitioner has placed in the top three enjoy national or international media attention or similar evidence, we cannot determine the significance of the petitioner's awards and prizes.

In light of the above, the petitioner has not established that he meets this criterion. Regardless, even if we were to conclude that the petitioner meets this criterion, which we do not, for the reasons discussed below, the petitioner falls far short of meeting any other criterion. An alien must meet at least three criteria to be eligible for the classification sought.

*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.*

Initially, the petitioner submitted certification from the Byelorussian Athletic Federation confirming that the petitioner “took participation” on the national team of Belarus in 100 kilometer races and mountain races. The June 2000 article in *Biel Daily* reports that the petitioner has run races as a member of the Byelorussian National Team. In response to the director’s request for additional evidence, the petitioner submitted the abovementioned letters from [REDACTED]. [REDACTED] makes no mention of the petitioner’s membership on a national team. [REDACTED] asserts that the petitioner “became a member and the front-runner of the Byelorussian National Team in the 100 km super marathon.”

The director questioned the “veracity” of the letters from [REDACTED] based on their similarity. The director does not appear to have considered the initial evidence relating to this criterion. On appeal, counsel asserts that as “an athlete, not a writer,” the experts chose to rely on “the wording proposed.” Counsel continues that it is unreasonable to require different opinions regarding the same individual.

As discussed above, while original letters are typically more persuasive, we acknowledge that the letters from [REDACTED] are signed, affirming the information in the letters. Of more concern is the fact that both [REDACTED] that their information comes from the petitioner’s own affidavit; neither professes first hand knowledge of the petitioner’s record despite Mr. [REDACTED] claim to have served as Chief Coach of the Byelorussian National Team in marathon and super marathon races.

Despite our misgivings about the letters from [REDACTED] we acknowledge the submission of the certificate from the Byelorussian Athletic Federation and the newspaper article both affirming the petitioner’s membership on the national team of Belarus. Membership on an Olympic Team or a major national team such as a World Cup soccer team can serve to meet this criterion. Such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner’s burden to demonstrate that he meets every element of a given criterion, including, in this case, that he is a member of a team that *requires outstanding achievements of its members, as judged by recognized national or international experts*. We will not presume that every national “team”<sup>2</sup> is sufficiently exclusive.

The record lacks information regarding the requirements to join the Byelorussian national running team. For example, the record contains no information such as the number of individuals on the team, the criteria for joining the team and the selection process. Without such information, the petitioner cannot establish that he meets this criterion.

*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.*

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<sup>2</sup> Running is not inherently a “team” sport with a predetermined number of players.

As stated above, a Swiss newspaper, *Biel Daily*, reports that the petitioner won two local marathons. An undated article in the same publication reports another win in another unidentified race. The photo caption for an article in *Ultra-Marathon* on the 10<sup>th</sup> Swabian Alb Marathon in January 2001 reveals that the petitioner finished second in that race. An article on the 11<sup>th</sup> Swabian Alb Marathon in October 2001 published in the German magazine *Running*, reports the petitioner's third place finish in that race.

The director concluded that the articles were not "about" the petitioner and that the petitioner had not demonstrated that the publications were major media. On appeal, counsel references a German article and asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) does not require that the material be "a feature article" about the petitioner. Counsel further concludes that documentation "was provided to establish the caliber and impact of this professional publication."

Counsel is not persuasive. First, the regulation requires that the published materials be "about" the alien. We must presume that the word "about" is not superfluous and that it has some meaning. An article that is clearly about a competition and mentions the petitioner in passing cannot credibly be considered "about" the petitioner. That said, the June 2000 article that appears to relate to the petitioner's win in a January 2000 race is sufficiently "about" the petitioner. The article appears in the *Biel Daily*. Contrary to counsel's assertion on appeal, the petitioner has not submitted any documentation regarding the publications in which the articles appear. Rather, in response to the director's request for additional evidence, counsel relies on his own unsupported assertion regarding the significance of *Jogging*. The article in *Jogging*, however, is not "about" the petitioner. The record contains no evidence of the circulation of the *Biel Daily* and its name suggests that it is a purely local publication reporting on the winner of a local marathon.

In light of the above, the petitioner has not established that he meets this criterion.

*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 response to the director's request for additional evidence, the petitioner submits a 2001 certificate from the Brest District Executive Committee, Department on Physical Training and Sport, awarding the petitioner "title of 1<sup>st</sup> category of sport judge in track & field athletics." The director concluded that the record lacked evidence of the significance of this title or evidence that the petitioner actually judged an athletic competition.

On appeal, counsel asserts that the director improperly rejected a certificate from an athletic authority and asserts that if additional evidence was required "it should have been expressly requested." Counsel is not persuasive. The certificate was submitted in response to the director's request for additional evidence, which specifically requested "evidence to show that the [petitioner] has been a judge at a national or world class running event." It is unclear how the director could have expressly requested

additional information about the petitioner's title in the request for additional evidence when the petitioner had yet to submit evidence of this title.

We concur with the director that the certificate is not responsive to the request for additional evidence as it does not demonstrate that the petitioner actually judged a race. The petitioner was put on notice of this deficiency from the director's denial notice and fails to rebut that conclusion on appeal. Thus, the petitioner has not demonstrated that he meets this criterion.

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

In response to the director's request for additional evidence, counsel references the letters from Mr. [REDACTED] as evidence that the petitioner's achievements as a runner constitute a contribution of major significance to the field. Both references attest to the petitioner's "substantial contribution" to marathon running and mountain running. Both assert that the petitioner is unique in that he excels at both types of running. The record does not establish that the petitioner has placed in the top three in a mountain race. The director concluded that the petitioner had not demonstrated that he was influential in the field. After reaching this conclusion, the director noted the lack of evidence of endorsement deals.

On appeal, counsel asserts that the director erred in rejecting the reference letters, stating that running "is not as spectacular and not as prone to media coverage as other athletic fields." We do not find these assertions persuasive.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the

petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of athletics, the alien must show more than merely winning awards and prizes; a separate criterion covers those accomplishments. Neither [REDACTED] identify specific contributions or explain how the petitioner's contributions have influenced the field. The record contains no evidence that the petitioner has reached a trend-setting goal to which others aspire, such as a world record. Nor does the record reflect that the petitioner is featured in trade journals for an influential running style. Without such evidence or comparable evidence of an influence on the field as a whole, we cannot conclude that the petitioner has made a contribution of major significance to the field of running.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The director concluded that this criterion does not apply to the petitioner's field. On appeal, counsel asserts that the petitioner's "participation in competitions is similar to artistic exhibitions or showcases" and that the director should have considered the competitions as comparable evidence to meet this criterion.

We acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence where a criterion is not readily applicable. Clearly, this criterion is not readily applicable to the field of athletics. Every athlete making a living in his field, however, competes. We are not persuaded that typical athletic competitions are comparable to the type of exclusive exhibitions designed to showcase the work of an artist that could serve to meet this criterion in the field of visual arts. We do not preclude the possibility of some athletic events meeting this criterion, such as, on a case-by-case basis, an exhibition of national or international champion ice skaters billed as a showcase of the individual skaters' work. The petitioner, however, ran in competitive races. The races were not running exhibitions designed to showcase the talents of specific runners. The races were not promoted as a showcase of petitioner's talent and did not featuring him in the promotional materials. Thus, the petitioner has not demonstrated that he meets this criterion.

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

In response to the director's request for additional evidence, counsel referenced the letter from Mr. Gotski asserting that the petitioner "became a member and the front-runner of the Byelorussian National Team in the 100 km super marathon."

The director concluded that no evidence was submitted to meet this criterion. On appeal, counsel provides no new discussion of this criterion.

As discussed above, [REDACTED] implies that his information comes from the petitioner's own affidavit despite [REDACTED] claim to have served as Chief Coach of the Byelorussian National Team in marathon and super marathon races. The official certificate from the Byelorussian Athletic Federation does not assert that the petitioner played a leading or critical role for the team. We have already considered the petitioner's accomplishments while on the team above. At issue for this criterion is the role the petitioner was selected to play and the reputation of the entity that selected him for the role. The record contains no evidence that the petitioner was selected as team captain or served in a similar official role for the team. Moreover, the record lacks evidence regarding the reputation of the national team. In light of the above, the petitioner has not established that he meets this criterion.

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 runner 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 runner, 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.

Beyond the decision of the director, 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.

In response to the director's request for additional evidence, [REDACTED] assert that the petitioner will also coach and train runners. The regulation 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." While a runner and a coach certainly share knowledge of running, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). The record lacks evidence of the

petitioner's coaching ability. As such, the petitioner has not established that coaching is within his area of expertise.

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). 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.