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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 03 2006  
LIN 04 021 51225

IN RE: Petitioner: [REDACTED]  
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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, Nebraska Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on September 16, 2005. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 she would continue work in her field of expertise in the United States.

On appeal, counsel states: “[The petitioner] has always emphasized that she will continue to compete internationally, ultimately for the United States upon receiving U.S. citizenship.”

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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.

The regulation at 8 C.F.R. § 204.5(h)(5) states:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

This petition, filed on October 24, 2003, seeks to classify the petitioner as an alien of extraordinary ability as a competitive runner. On April 1, 2004 the Nebraska Service Center approved the petition.

The record includes a contract executed between the petitioner and ██████████ President, Jogging Ltd. and the Field and Track Sports Club, Sofia, Bulgaria. Part 2 of this document indicates that the "term of the contract" is from January 31, 2000 to January 1, 2005. A second document, entitled "Additional Agreement to Contract," reflects a subsequent agreement between the petitioner and ██████████ dated December 21, 2004, extending the initial agreement from January 1, 2005 to December 31, 2006.

On July 20, 2005, the director issued a notice of intent of intent to revoke the approval of the immigrant visa petition stating:

The record fails to indicate that the alien petitioner seeks to enter the United States to continue work in the United States. In Part 6-3 of the [I-140 petition] you state that you intend to compete in the next Olympics and represent your sponsor in all events. On June 10, 2005 you submitted a contract with ██████████ . . . in force from January 1, 2000, until December of 2006 . . . .

You indicate at the time of filing you were a student athlete. It is noted for the record that you appear to be in violation of your student status.

\* \* \*

It does not appear that you are coming to the United States to continue work but intend to compete for a Bulgarian company and deposit all of your earnings in a Bulgarian bank.

In response, the petitioner submitted a letter from [REDACTED], currently Director of Admissions and formerly Director of Athletics, Central Methodist University (CMU), stating:

[The petitioner] is currently a student at Central Methodist University. She competed on the international [sic] in track before coming to Central, such as the World Championships and Olympic Games in 2000. At CMU [the petitioner] competed for three years on the NAIA [National Association of Intercollegiate Athletics] level attaining All-American status all three years.

This past year [the petitioner] was an assistant coach in track coaching the sprinters. . . . Also she continues to work out, under my tutelage, and will return to national competition this year.

\* \* \*

After graduation from CMU in December 2005, [the petitioner] will continue to coach at CMU and compete on the international level.

The record includes correspondence from Edletzberger Harald International Sports Management, dated May 27, 2005 and September 24, 2005, reflecting the petitioner's intention to continue competing as a runner at various international level sporting events.

On September 16, 2005, the director issued the notice of revocation stating:

Following a review of additional evidence, it was noted that the additional evidence contains a contract between the petitioner and Jogging Ltd. Track and Field Athletics Sports Club, an apparent agency with offices in Sofia, Bulgaria. That contract was valid until January 1, 2005. On December 21, 2004, the contract was renewed for a two-year period from January 1, 2005, to December 31, 2006.

The presence of the contract with a Bulgarian based agent called into question whether the petitioner intended to come to the United States to continue in the field of expertise.

We do not find that the existence of the petitioner's contract with Jogging Ltd. precludes eligibility pursuant to 8 C.F.R. § 204.5(h)(5). We must also consider the letters from the petitioner's prospective employer, CMU, and the petitioner's statements regarding her intention to continue training in the United States and to compete at national and international sporting events.

On appeal, the petitioner submits a second letter from [REDACTED] stating:

[The petitioner] is currently a full-time student at Central Methodist University. While at CMU [the petitioner] has competed in track. All NAIA rules and restrictions for competition were followed during each of the years [the petitioner] competed for Central.

\* \* \*

[The petitioner] has a tremendous background as a “world class” athlete, competing in the 2000 Olympic Games. [The petitioner] has been able to take this great knowledge attained from competing against the best and transfer this over to coaching. [The petitioner] has become quite a good coach both on the college level and working with youngsters in the community.

In my former position as Director of Athletics, I started to work with [the petitioner] as a personal coach and will continue to do so. [The petitioner] and I believe that she will be able to compete on the next level for the United States.

On appeal, counsel states:

The service has raised an issue of the impact of a contract between [the petitioner] and a Bulgarian sponsor, Jogging Ltd., signed in 2000 before [the petitioner] knew that she will be coming to the United States, for a term of four years ending January 01, 2005, and renewed in December 2004, after [the petitioner] no longer competed in NAIA for CMU [Central Methodist University] or otherwise held herself to be an NAIA athlete or received any related benefits. (for detailed statement and clarification on the issue please see 9/26/2005 Affidavit of [the petitioner]).

The evidence, on record prior to the revocation and newly submitted, shows that [the petitioner] has commenced training under American coaches for participation in top international events in anticipation of her graduation from CMU in late 2004. (Letters from the late [redacted] her former coach, and [redacted] apparently written in July 2005. 7/26/2005 Affidavit of [the petitioner], 9/26/2005 Affidavit of [the petitioner], 9/21/2005 Letter of [redacted]).

[The petitioner] could not have been in violation of her NAIA status (under any of the NAIA regulations Article VII, grounds) on the basis of the original contract with Jogging Ltd., as evidence shows that the contract was entered into prior to acquiring NAIA status, that upon acquiring of NAIA status she did not perform under it, nor did Jogging Ltd., that she has not received any benefits under it since she came to the United States in 2002, and that said contract was defaulted upon by both parties and not acted upon, thus making it unenforceable, for the period of January 2002 to December 2004. (9/26/2005 Affidavit of [the petitioner], 9/21/2005 Notification Letter/Termination of Contract).

[The petitioner] could not have been in violation of NAIA status on the basis of the extension of the original contract with Jogging Ltd. in December 2004, for a two-year period, as [the petitioner] no longer held herself to have NAIA status after May 2004, no longer competed in NAIA events as student athlete representing CMU after May 2004, and did not receive any NAIA benefits after May 2004. (9/26/2005 Affidavit of [the petitioner]).

Additionally, even if [the petitioner] was in violation of her NAIA status at any time, such violation based on the presence of the contract with a Bulgarian based agent cannot call into question her intent to come to the United States to continue in the field of expertise, as her qualifying line of “work” is to train for and to continue to compete internationally, ultimately for the United States, in the top international events that establish her as an extraordinary athlete – in which she will be able to

represent only Bulgaria until she receives U.S. citizenship and hopefully only one year thereafter. Simply put, once done with the NAIA in 2004, her choices are to compete internationally representing Bulgaria for duration of lack of U.S. citizenship, or to forgo competing at the top events that make her the extraordinary athlete that she is.

In this light her coaching duties and commitments in the United States are a clear indication of her commitment to work in her field of expertise to the benefit of the U.S. Track and Field culture, as coaching duties are inseparable from her training and performance as an athlete — the most meaningful contribution she can make to U.S. Track and Field absent U.S. citizenship which will allow her to compete for the United States. (9/26/2005 Affidavit of [the petitioner]).

In any event, [the petitioner] has received formal termination of said contract, as a result of her dedication to not allow anything to negatively impact her immigration status in the United States, although this leaves her currently without an agent to sort out details of her participation in international events with the proper Bulgarian athletic authorities.

The appellate submission includes a “Notification Letter” dated September 21, 2005 from [redacted] officially terminating his contract and the supplemental agreement with the petitioner due to non-performance of duties. Therefore, the director’s concerns regarding this contract are now moot.

The petitioner also submits an eight-page affidavit directly addressing the director’s concerns and detailing her plans on how she intends to continue working in her area of expertise in the United States. The petitioner’s detailed affidavit, combined with the two letters from Larry Anderson and the correspondence from Edletzberger Harald International Sports Management, are adequate to demonstrate that the petitioner intends to continue work in her area of expertise in the United States. While we agree with the director that the record of evidence at the time of the petition’s initial approval lacked “clear evidence” as to how the petitioner intended to continue her work in the United States, we find that the evidence submitted in response to the notice of intent to revoke and on appeal is adequate to satisfy the requirements at 8 C.F.R. § 204.5(h)(5).

In conclusion, we find that the petitioner has satisfied the statutory requirement set forth at section 203(b)(1)(A)(ii) of the Act. The petitioner’s appellate submission has overcome the stated grounds for revocation and thereby established eligibility for the benefits sought under section 203 of the Act. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968), affirmed in *Matter of Estime* and *Matter of Ho*. Here, the petitioner has sustained that burden. Accordingly, the decision of the director revoking the approval of the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.