



U.S. Citizenship
and Immigration
Services

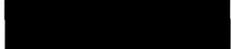
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FILE:



EAC 04 229 50037

Office: VERMONT SERVICE CENTER

Date: **MAY 09 2006**

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 asserts that the petitioner’s medal “should be given the same respect and admiration as a Nobel Prize.” Alternatively, counsel asserts that the petitioner meets at least three of the ten regulatory criteria as required. Finally, counsel asserts that the petitioner’s “acclaim continues, as she is still the winner of that medal, the first Kenyan to do so, and an inspiration to all.” For the reasons discussed below, we uphold the director’s decision. Specifically, we find that the petitioner’s medal is not a one-time achievement, that the evidence is not indicative of *sustained* acclaim and that the petitioner has submitted persuasive evidence for only one of the ten regulatory criteria (awards), of which an alien must meet at least three.

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. It

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

This petition seeks to classify the petitioner as an alien with extraordinary ability as an “athlete.” The petitioner is a runner who suffers from cerebral palsy. 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). The petitioner won a bronze medal at the 2000 Paralympics in Sydney, Australia. The petitioner submitted evidence that the 2000 Paralympics, which parallel the Olympics, drew 3,824 athletes from 122 countries. Over one million tickets were sold¹ and 2,300 media representatives covered the games. The games could also be viewed on a webcast.

The director did not consider whether the petitioner’s bronze medal could be considered a one-time achievement. On appeal, counsel asserts that a “medal in the Paralympic Games is the highest award possible for a track and field athlete with disabilities” and, thus, “should be given the same respect and admiration as a Nobel Prize.” The only example of a one-time achievement provided in the legislative history is a Nobel Prize. H.R. Rep. No. 101-723 at 59 (1990). The regulations make clear that not every international award or prize can serve as a one-time achievement, only those that are major and internationally recognized. A “lesser” internationally recognized award can serve to meet one of the alternative regulatory criteria, of which an alien must meet at least three.

The statutory standard for the classification sought is “sustained national or international acclaim.” The Nobel Prize generates significant media attention internationally. Similarly the Olympics are broadcast on primetime television internationally. Such media attention garners significant acclaim for those who win a Nobel Prize or Olympic medal, consistent with the statutory standard for this classification. The petitioner has not demonstrated that the Paralympics generate nearly the media attention internationally.

Moreover, the Nobel Prize is awarded in broad categories such as Economics and Chemistry. Such a broad pool of possible winners contributes to the overall prestige of winning. Similarly, each Olympic event is heavily contested. The Paralympic Games, however, by necessity must limit events by disability classification, narrowing the competition. Specifically, not only are the Paralympics limited to athletes with disabilities, the petitioner competed in an event limited to those with her same disability. While we are cognizant of the obstacles disabled athletes face, it remains that narrowing the petitioner’s field to disabled athletes significantly reduces the pool of competitors. While we are persuaded that the petitioner’s medal is a noteworthy accomplishment relevant to these proceedings, we are not persuaded that it serves as a one-time achievement such that no additional evidence is necessary.

Barring the alien’s receipt of a major, international recognized award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary

¹ According to www.gamesinfo.com.au, 6.7 million tickets were sold to the Sydney Olympics.

to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria.²

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

As discussed above, the petitioner won a bronze medal in the 2000 Paralympics. As a tribute to this achievement, in December 2000 the petitioner received the Head of State's Commendation (Civilian Division) from the Republic of Kenya. We are persuaded that such achievements can serve to meet this criterion. As noted by the director, however, the petitioner won those awards nearly four years prior to filing the petition. On appeal, counsel asserts that the petitioner's acclaim is sustained because she "is still the winner of that medal." Counsel's logic is not persuasive. Any individual who has ever accomplished anything will always be able to claim the accomplishment as her own. Thus, counsel's reasoning would undermine the entire meaning of "sustained." Congress expressed its intent that aliens with sustained acclaim would be able to demonstrate a "career of acclaimed work in the field." H.R. Rep. 101-723 at 59 (1990). We concur with the director that the petitioner has not sustained her acclaim after 2000. Regardless, for the reasons discussed below, the petitioner has not established that she meets two additional criteria.

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.

The director concluded that the petitioner did not submit evidence to meet this criterion. On appeal, counsel continues to assert that the petitioner's selection for Kenya's 14-member national Paralympics team serves to meet this criterion. The record contains no evidence as to how many disabled women run competitively in Kenya such that we can evaluate the competition to join the national team. Even if we were to conclude that the petitioner's national team membership is comparable evidence to meet this criterion, the petitioner was chosen for a team that competed in 2000. Thus, once again, her team membership is not evidence of sustained acclaim after 2000.

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.

Initially, the petitioner submitted an Internet report posted on the Daily Nation's website that reports on the Kenyan team's results at the Paralympics. In response to the director's request for additional evidence, the petitioner submitted an article in the *East African Standard* reporting on eleven athletes who received state honors in 2000. The petitioner is one of those athletes.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The director concluded that the evidence did not demonstrate sustained national or international acclaim. We concur with the director. Moreover, the petitioner did not submit any evidence regarding the significance of the Daily Nation's website or the circulation of the *East African Standard*. Even assuming these media are major media, neither the report nor the article is primarily about the petitioner as required by the plain language of this criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii). Thus, the materials cannot serve to meet 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 herself as a runner to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a disabled runner, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

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.