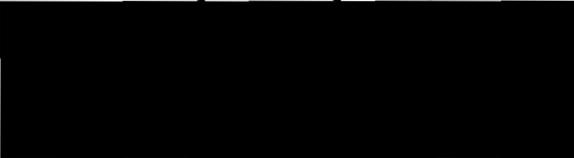




U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 30
WAC 05 053 50816

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 Director, California 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 and additional evidence. For the reasons discussed below, the petitioner has not overcome the director’s bases for denial. Specifically, while the petitioner has submitted more persuasive evidence of her accomplishments in the 1990’s relating to two of the regulatory criteria, an alien must meet at least three criteria to be eligible for the classification sought and demonstrate *sustained* national or international acclaim proximate to the date of filing, in this case, 2004. Finally, the petitioner submitted evidence that directly contradicts some of her own claims made to the director and in her profile posted on the University of Arizona’s website and submitted as evidence in this matter. These contradictions reduce the petitioner’s credibility.

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 – sprinter.” The petitioner competed in track and field in Senegal until 1999, when she enrolled as a student at Central Arizona College. The petitioner subsequently transferred to the University of Arizona. The petitioner competed in track and field at the collegiate level for both institutions.

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, she claims, meets the following criteria.¹

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

The petitioner initially submitted her profile from the University of Arizona’s website indicating that she was the Senegalese National Champion in 1993, 1994, 1997 and 1998. The profile further indicates that the petitioner was a semifinalist in the African Championships in 1998 and a finalist in the 100 meters at the African Junior Championships. The petitioner also submitted lists of times for Senegalese women from [REDACTED] listing the petitioner’s time as tenth of eleven for the 100 meters and fifth of five in the 200 meters. The petitioner submitted photographs of several medals and trophies but failed to submit any certificates confirming the nature of the competitions and the petitioner’s receipt of these medals.

In response to the director’s request for evidence of the significance of the petitioner’s awards, the petitioner submits a list of all of her awards and asserts that “an Olympian at the 2000 Sydney Olympics is self-explanatory.” While the petitioner claims to have participated in the 2000 Olympics, she does not claim to have won a medal. The petitioner does list other national and international awards prior to 2000 and All-American designation in 2000 and 2001. Going on record without supporting documentary evidence, however, 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)).

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

The director noted the lack of evidence from and about the entities that purportedly issued the medals to the petitioner and concluded that the petitioner had not established that she personally won these medals or that they were nationally or internationally recognized.

On appeal, counsel lists several awards the petitioner purportedly won, such as a bronze medal at the 1996 African Championship, first place at the 1996 IAAF track meet in Paris and first place at the 1999 West African Championships, but fails to identify specific evidence of these awards other than the petitioner's own self-serving "extensive list." The unsupported assertions of counsel 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). In support of counsel's appellate assertions, the petitioner submits affidavits from the General Secretary and the Administrative Director of the Senegalese Federation of Athletics asserting that the petitioner was "preselected" for the national team of Senegal that participated in the 2000 Olympics in Sydney, that she was the National Champion in Senegal at age 14 and that she represented Senegal at "many international competitions." The General Secretary of the Confederation of African Athletes confirms that the petitioner represented Senegal at African events and Africa at world events. He does not identify specific awards or prizes the petitioner may have won at these events, stating only that the petitioner has "given good performances." In support of these assertions, the petitioner submitted official lists of Senegalese track championships confirming that the petitioner was a national champion in the 100 and 200 meters in 1994. The petitioner also submitted the results for the 1999 World University games reflecting the petitioner's seventh place finish.

The petitioner has now established her status as a national champion in Senegal in 1994, ten years before the petition was filed. While the list of accomplishments submitted in response to the director's request for additional evidence indicates that she continued as national champion in 1995, 1996, 1997 and 1998 and the petitioner's own profile posted on the University of Arizona's website lists additional national championships in 1993, 1997 and 1998, the list of national champions provided on appeal lists other individuals as the national champion in all of those years other than 1994. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved this inconsistency, which reduces her credibility. Nevertheless, the record contains independent objective evidence of the petitioner's 1994 national championship status.

The statute requires evidence of *sustained* national or international acclaim. Thus, we must review the petitioner's accomplishments proximate to the filing of the petition in 2004. In an April 1, 2003 letter, [REDACTED] Director of Track and Field and Cross Country at the University of Arizona confirms that the petitioner finished sixth in the nation in the 60 meters and 17th in the National Collegiate Athletic Association (NCAA) Indoor Championships. He characterizes her as a "threat to compete in the 2004 Olympic Games." The record lacks evidence that she competed in the 2004 Olympics.

The petitioner initially submitted information from the University of Arizona's website indicating that in her NCAA Championships debut in 2003, the petitioner finished seventh in her heat and 21st overall, failing to qualify for the next day's finals. These results are not indicative of a nationally recognized prize or award. In response to the director's request for additional evidence, the petitioner submitted a plaque from the VI Meeting Athletica Leggera. The petitioner did not submit a translation of the plaque, certified or otherwise, and, thus, the evidentiary value of this plaque is minimal. 8 C.F.R. § 103.2(b)(3).

The petitioner also submitted (1) a 2003 Most Valuable Player (MVP) certificate from the University of Arizona, (2) a plaque for *academic* achievement at the University of Arizona, (3) certificates from the National Junior College Athletic Association (NJAA) naming the petitioner Academic All-American and Distinguished Academic All-American in Track and Field in 2001, (4) a newspaper article reporting the petitioner's first place finish against Mesa Community and Phoenix Colleges and (5) photographs of individual medals with the names of competitions printed on the back.

Recognition as MVP is not an honor for which athletes nationwide compete. Rather, the recognition is school-wide only. Recognition for *academic* achievement by an athlete is not an award or prize for excellence in the petitioner's field of athletics. The record contains no evidence regarding the significance of "All-American" designation. Specifically, the petitioner has not established how many college athletes receive this recognition nationwide and the criteria for selection. The Mesa Community and Phoenix College results represent a competition limited to Arizona. Thus, the first place finish is not a nationally recognized award or prize.

On appeal, the petitioner submits an April 1, 2003 article in the [REDACTED] reporting her first place finish in a meet against the University of Colorado and Cal State Los Angeles. A March 14, 2003 article in the same publication notes the petitioner's "lack of championship experience." An undated article in an unidentified paper reports the petitioner's win in the 60 meters at the Mountain Pacific Indoor Conference Championship. Internet results for this competition in 2003 confirm the petitioner's first place finish.

The petitioner also submits the following results in various 100 and 200 Meters events:

1. Seventh in the Central Arizona College Women's Top Ten,
2. Sixth in the 2000 NJCAA National Outdoor Championship,
3. Third in the 2002 Arizona California Challenge,
4. First at a 2003 event at Mt. San Antonio Community College,
5. Third at the 2003 Arizona State vs. Arizona vs. Northern Arizona event,
6. First in "Batteria 2" at the Meeting Citta Di Pergine in Italy in 2003,
7. Third in an unidentified NCAA race (the results submitted begin at page 6),
8. Second in Heat 2 at a 2003 NCAA West Regional event, and
9. Third at a 2004 event at Mesa Community College.

Finally, the petitioner was ranked seventh nationally in 2003. As all the ranked athletes represent schools, these appear to be collegiate rankings. With the exception of number 6 above, the results in identified competitions all reflect either finishes below third or competition at inherently local or regional events. The record contains no explanation of "Batteria 2." If these results merely qualified the petitioner for a final race with the top finishers in Batteria 1 and Batteria 3, the results of that final race are material. The results of a final race at the 2003 Italian event are not in the record.

The record lacks evidence of lesser nationally or internationally recognized awards or prizes after 1994. The petitioner must demonstrate *sustained* acclaim as of the date of filing, in this case, 2004. Thus, the petitioner's award record is insufficient to meet this criterion without evidence of acclaim more proximate to the date of filing.

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.

Both the petitioner and counsel reference the petitioner's team memberships in Arizona. College teams are not national teams and cannot serve to meet this criterion. We note that the Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

If major league team status is insufficient, we cannot conclude that college level play can serve to meet this criterion.

In response to the director's request for additional evidence, the petitioner asserted that she had "*performed* in international athletic competitions for Team Senegal in the 2000 Olympics." (Emphasis added.) She asserted that this participation serves to meet this criterion. On appeal, counsel also asserts that selection for the Senegal national team that competed in the 2000 Olympics serves to meet this criterion. The petitioner had not previously submitted any evidence to corroborate her claim to have participated in the Sydney Olympics. On appeal, she submits a certificate from the General Secretary of the Senegalese Federation of Athletics purporting to confirm that the petitioner was "preselected in the national team regarding the Olympic Games of Sydney in 2000." The certificate does not explain what "preselected" means. Specifically, the record does not establish whether the petitioner selected for inclusion in the team roster or to merely compete in preliminaries for a place on the team.

More significantly, an article in the *Arizona Daily Star*, also submitted on appeal, indicates that the petitioner did not actually join Senegal's Olympic team due to her inability to commit to the training

regimen while a student in the United States. This article contradicts the petitioner's explicit statement in the record that she did perform in the Olympics. As stated above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The petitioner has not resolved this inconsistency. As the petitioner has not established that she was a member of the Olympic team, she cannot rely on this team membership to meet this criterion. Moreover, her explicit claim to have "performed" with this team at the Olympics seriously reduces her overall credibility.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Nevertheless, we acknowledge that the petitioner competed in Italy in 2003 at a competition of unknown significance. Her listing includes the designation "Senegal." The record does not establish, however, whether Senegal is simply listed as her country of birth or whether she represented an official Senegal national team. The certificates from Senegalese authorities submitted on appeal do not explicitly confirm that the petitioner remained on the official national team of Senegal after coming to the United States.

In light of the above, the petitioner has not established that she meets this criterion with evidence proximate to the date of filing.

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.

The petitioner initially submitted an article about a competition in which she participated that was posted on the *Arizona Daily Wildcat's* website. The petitioner also submitted a foreign language article, posted on a foreign newspaper's website. The petitioner did not submit a translation as required by the regulations at 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also failed to submit evidence regarding the circulation of the foreign publication. In the request for additional evidence, the director inquired as to whether the articles were in publications with a national or international distribution and whether the focus of the articles was the petitioner. In response, the petitioner asserted that she had been covered in "international media" and referenced "citations to my athletic work on the World Wide Web." The petitioner submitted an article on a competition with Mesa Community and Phoenix Colleges that appeared in the *CActus*, which appears to be the newspaper of Central Arizona College. The director concluded that the petitioner had not submitted sufficient supporting evidence for this criterion that was clear and concise.

On appeal, the petitioner submits a May 23, 2006 article about Central Arizona that does not mention her and an undated article about her in the *Arizona Daily Star*. The petitioner also submitted photographs of herself competing from *Track and Field Photo Magazine* but no evidence of the

magazine's circulation. Counsel asserts that the articles submitted "included one from the largest daily newspaper circulated in Tucson, Arizona."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published materials be "about" the petitioner and appear in major media. We are not persuaded that coverage in a local newspaper covering the area where the petitioner resides is indicative of national or international acclaim regardless of whether it is the largest daily newspaper circulated in the city. The article in the *Arizona Daily Star* submitted on appeal for the first time is undated. Thus, the petitioner has not established that it appeared prior to the date of filing. As such, it is not evidence of her 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). Regardless, without evidence of a national circulation, we cannot conclude that it constitutes major media. A photograph in a sports photography magazine does not constitute published material about the petitioner. While Internet websites have the potential for international access, not every website is major media. It is the petitioner's burden to demonstrate that the website regularly attracts users nationally or internationally. Moreover, the Internet materials simply report the results of competitions in which the petitioner participated. Such results cannot be credibly considered published material "about" the petitioner. Finally, the petitioner's own profile posted on the University of Arizona's website cannot serve to meet this criterion as it does not constitute independent journalistic coverage of the petitioner.

In light of the above, the petitioner has not demonstrated that she meets this criterion.

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

On appeal, counsel asserts that the evidence submitted to meet the above criteria also serves to meet this criterion. Evidence directly relating to one criterion does not presumptively establish that an alien meets another criterion. To hold otherwise would be to negate the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. 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, an athlete must demonstrably impact the field through style or by setting new goals to which others aspire. The record lacks evidence that the petitioner has impacted the practice of sprinting, set a world record or accomplished a comparable achievement. Thus, the petitioner has not established that she 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, the petitioner asserted that her performance with the Senegal National Team serves to meet this criterion. On appeal, counsel does not challenge the director's conclusion that the petitioner failed to submit convincing evidence relating to this criterion. We concur with the director. As stated above, the petitioner did not participate in the 2000 Olympics as claimed. Moreover, while an Olympic team may have a distinguished reputation, not every athlete can be said to play a leading or critical role for the team that distinguishes the athlete from other members of the team. Rather team membership is better considered above pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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 an athlete – sprinter 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 an athlete – sprinter, 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.

Moreover, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

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.

The director concluded that the petitioner had not submitted the evidence required under this regulation. On appeal, the petitioner submits a letter from [REDACTED] Head Coach of Track and Field at Central Arizona College offering the petitioner the position Women's Sprint Coach.

The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to “continue work in the area of expertise.” The petitioner, however, intends to work as a coach in the United States. While a sprinter and a coach certainly share knowledge of track and field, 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. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Even if we considered the totality of the evidence, the petitioner has not established an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within her area of expertise. Specifically, even if the petitioner had demonstrated extraordinary ability as an athlete, the record lacks evidence that she has successfully coached, let alone at the national level.

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.