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FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 24 2007

EAC 03 135 50528

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The director reopened the matter on the petitioner's motion, and denied the petition again. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 argues that the director "failed to properly consider the evidence presented" and that the director's findings contain "critical errors." We concur with counsel's arguments. For the reasons discussed below, we find that the director's request for additional evidence erroneously implied that the petitioner had to meet specific criteria and that the director's June 13, 2005 and September 7, 2005 decisions contain errors of law and ignore or incorrectly evaluate the petitioner's evidence and arguments.

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 are listed 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 a “Professional Athlete and Instructor.” The petitioner has competed as a triathlete, swimmer, and runner. 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 criteria follow.

- (i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (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;
- (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 specialization for which classification is sought;
- (v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In a memorandum accompanying the petition, counsel asserted that the petitioner “has received a one-time achievement, which clearly demonstrates her . . . extraordinary ability in her field of expertise.” Counsel states: “During the years of 1984 until 2001, [the petitioner] was the best triathlete of Chile. She won the National Triathlon Champion during those years. She won three Gold Medals in the 1<sup>st</sup> Senior Olympic Games held in Toronto, Canada.”

As stated previously, 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, internationally recognized award). National championships won by the petitioner in Chile do not constitute major internationally recognized awards. Regarding the petitioner's swimming medals from the "Senior Olympic Games," we note that this competition limits entry to swimmers above a certain age. Earning a medal at such a competition, which excludes younger and faster swimmers (with the best times) from participation, is not an indication that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). Further, there is no evidence that the "Senior Olympic Games" held in Toronto, Canada in 1985 enjoyed a level of recognition comparable to the 1984 Summer Olympics, officially known as the Games of the XXIII Olympiad, which were held in Los Angeles, California.

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy truly international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields.

In this case, there is no evidence showing that the events in which the petitioner received awards were broadcast on television to a substantial international audience or that they attracted significant major media coverage at the international level (in the same manner as events such as the Summer Olympics or the World Cup of Soccer). The record does not establish that the petitioner's awards, which should be evaluated by the director as lesser nationally or internationally recognized prizes or awards under the criterion at 8 C.F.R. § 204.5(h)(3)(i), command immediate international recognition comparable to the examples cited above. Thus, the petitioner's evidence fails to demonstrate that she is the recipient of a major, internationally recognized award.

At the time of filing, the petitioner submitted letters of support listing her awards, evidence of her membership in the Chilean Triathlon Federation, published material about her athletic accomplishments, and print advertisements in which she appeared. Many of the published materials submitted by the petitioner were not accompanied by complete English language translations. Pursuant to 8 C.F.R. § 103.2(b)(3), however, any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In the memorandum accompanying the petition, counsel argues that the petitioner satisfies the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii), (iv), and (vii).

On January 19, 2005, the director issued a request for additional evidence. Specifically, the director requested evidence of the petitioner's awards, memberships, published material about the petitioner, and her salary. The director provides no explanation for singling out these four criteria. Nothing in the regulation implies that an

alien must meet any specific criterion as long as the alien meets at least three of the ten criteria. The director also noted that the record lacked letters “from well-known persons” in the petitioner’s field although most of the criteria require objective evidence of accomplishments as opposed to letters of support from recognized experts, however credible their opinions may be.

In response, the petitioner submitted additional reference letters attesting to her awards and memberships, more published materials about the petitioner that were unaccompanied by certified English language translations, and the petitioner’s Form W-2 Wage and Tax Statement for 2003.

In the June 13, 2005 decision denying the petition, the director listed all ten of the regulatory criteria, but only discussed awards, memberships, and performing in a leading or critical role for distinguished organization, a criterion not addressed by the petitioner. The director’s decision included no discussion of the published material submitted by the petitioner or her Form W-2 Wage and Tax Statement for 2003, nor did it address counsel’s arguments that the petitioner meets the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv), and (vii). The director acknowledged that the petitioner based her eligibility claim on her awards but concluded that she had not demonstrated whether the awards were individual or “as a member.” Nothing in the regulation at 8 C.F.R. § 204.5(h)(3)(i) precludes team awards. Nevertheless, the competitive swimming and triathlon events in which the petitioner has participated are individual events, not team events. As such, the director’s analysis regarding the petitioner’s awards was in error. The director also stated that the petitioner had not submitted “objective evidence, such as affidavits from well-known U.S. organizations or individuals, to support your claims of prestige and ability.” While affidavits may serve as valid evidence, they are far more subjective than objective. Evidence that addresses the regulatory criteria, such as awards and independent journalistic coverage of the alien, is far more persuasive than the subjective opinions of experts in the field. Thus, the implication that expert letters from U.S. sources are required to establish eligibility under this classification is in error.

On motion, the petitioner submitted published material about the alien appearing in [REDACTED] magazine in 2005, however, this material was published subsequent to the petition’s filing date. A petitioner must establish **eligibility at the time of filing**. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, CIS will not consider the 2005 [REDACTED] magazine article in this proceeding. The petitioner also submitted additional reference letters.

In the September 7, 2005 decision affirming the June 13, 2005 decision, the director stated: “With your motion, you submitted a magazine article from your country, and three reference letters. First, the magazine article appears to be from a magazine circulated in your country of Brazil. Therefore it does not appear to be a [sic] international magazine recognized in the sports industry.” The petitioner, however, is a native of Chile and the magazine in question is a Chilean sports publication. Further, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) includes no requirement that a publication have “international” circulation. The statute and regulations specifically allow for evidence establishing “national” acclaim such as a nationally circulated sports publication. The director’s decision included no discussion of the published material submitted along with the petition and in response to the director’s request for evidence. We note that the director’s decision did not identify any deficiencies in the published materials submitted by the petitioner despite her failure to submit complete certified English language translations of her articles and circulation statistics showing that the publications featuring her had significant national distribution.

The September 7, 2005 decision further states:

Second, the reference letters submitted do not appear to be from well-known persons in the athletic field and appear to be from personal acquaintances. The letters . . . were predominantly written by the [petitioner's] friends or mentors in support of the petition . . . . The record, at present, does not establish that the [petitioner's] accomplishments have been recognized as having advanced . . . the field to a greater degree than other involved in similar pursuits by members of the music industry.

The preceding observation is irrelevant to the petitioner's case as she is an athlete rather than a member of the "music industry." Further, the director's observation that the petitioner submitted mostly letters from "friends or mentors" is not supported by the evidence of record. The record includes letters of support from officials from the National Institute of Sports of Chile, the Olympic Committee of Chile, the Pan-American Triathlon Confederation, the Association of Sports Journalists of Chile, and the Chilean Triathlon Federation. The director provides no specific examples of statements from the preceding officials to support the observation that they were the petitioner's "friends or mentors."

In light of the above, this matter is remanded to the director in order to issue a new request for additional evidence that lists all ten of the regulatory criteria<sup>1</sup> and makes clear that the petitioner need only meet three of the criteria and that there is no requirement that the petitioner meet a specific criterion as long as she meets three. The director should also request the following:

1. Primary evidence of the petitioner's awards (presently the record includes only letters of support attesting to their existence). Photocopies of the actual awards or medals are sufficient.
2. Complete certified translations of all of the foreign language documents previously submitted (including all published material about the alien).
3. Any media coverage of the events at which the petitioner has won awards or other comparable evidence of their significance.
4. Evidence from the publications that have covered the petitioner regarding their circulation statistics.
5. Official documentation from the associations' regarding their membership criteria (such as membership bylaws).
6. An updated explanation from counsel or the petitioner as to the specific criteria the petitioner claims to meet.

In conclusion, we find that the director's September 7, 2005 decision is so flawed that it does not present the petitioner with an opportunity to mount a meaningful rebuttal on appeal. Therefore, this matter is remanded to the director for further action in accordance with the foregoing. While we agree with the director's determination that the evidence of record is not adequate to demonstrate the petitioner's eligibility for

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<sup>1</sup> A request for additional evidence relating to this classification need not always address all ten criteria. For example, if a petitioner has claimed three or more criteria, the request might seek clarification on those claimed criteria. As stated above, however, by inquiring into only four criteria, and ignoring the other criteria that the petitioner claimed to meet in the memorandum accompanying the petition, the director created the erroneous impression that the four criteria addressed in the request for evidence were more relevant than the other six criteria at 8 C.F.R. § 204.5(h)(3).

classification as an alien of extraordinary ability, we find that the director's decision failed to properly address the petitioner's evidence as it relates to the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). The director may request any additional evidence deemed warranted and should allow the petitioner 12 weeks to respond. Pursuant to 8 C.F.R. § 103.2(b)(12) and *Matter of Katigbak*, 14 I&N at 45, any evidence submitted in response to the director's request must demonstrate eligibility at the time of filing (March 10, 2003). In the event of an adverse decision, the director's new decision shall set forth the specific deficiencies in the evidence outlined above and any further deficiencies as noted by the director in order to afford the petitioner an opportunity for a meaningful rebuttal.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.