

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 24 2007
WAC 05 155 51152

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:



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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also found that the record lacked clear evidence that the petitioner was coming to the United States to continue work in his area of expertise.

On appeal, counsel argues that the petitioner “has demonstrated that he is eligible to be classified as an alien of extraordinary ability pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act.”

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 he has sustained national or international acclaim at the very top level.

This petition, filed on May 5, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a competitive rifleman and instructor. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been

sustained. The record reflects that the petitioner has been residing in the United States since November 19, 2003. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than 17 months), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had adequate time to establish a reputation in this country.

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 pertaining to the following criteria.

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

The petitioner submitted the following:

1. Award from the Venezuelan Federation of Shooting stating that the petitioner won First Place in the Category of Male Air Rifle at the 43rd National Championship of Shooting (September 2002)
2. Award from the Venezuelan Federation of Shooting stating that the petitioner won First Place in the Category of Male Carbine Lying-Down at the 43rd National Championship of Shooting (September 2002)
3. Award from the Venezuelan Federation of Shooting stating that the petitioner won Second Place in the Category of Male Carbine 3x40 at the 43rd National Championship of Shooting (September 2002)
4. Award from the South American Sport Organization stating that the petitioner won "2nd Place, 50 M Rifle, 3 Positions Team, Male, Olympic Shooting" at the VII South American Games (August 2002)

While we find that the preceding awards are adequate to demonstrate eligibility under this criterion, there is no evidence showing that the petitioner has competed at the national or international level subsequent to 2003. The absence of such evidence indicates that the petitioner has not sustained the acclaim he earned in Venezuela subsequent to his entry into the United States.

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 petitioner submitted a letter signed by the President and General Secretary of the Shooting Federation of Venezuela stating that the petitioner "was a member of the National Shooting Olympic Team . . . until the 31st of December 2003." A second letter from Shooting Federation of Venezuela states: "[The petitioner] was a member of the Olympic Shooting National Selection, in the ways of the rifle .22 caliber (prone position), three positions (3x40). He was representing our country in World Cups, Bolivarian Games, Centro American Games, and was also selected to assist in the Shooting World Cup Athens 2004 (Preolympics)." While an Olympic team is not an "association," we could consider such evidence as comparable pursuant to 8 C.F.R.

§ 204.5(h)(4) because membership in an Olympic team is the result of multi-level national competition, supervised by national experts. Therefore, we find that the petitioner meets this second criterion. However, we note that there is no evidence showing that the petitioner has competed for a national team subsequent to 2003.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted a May 1, 2003 document entitled “Liquidation of Salary Payroll” from the Ministry of Defense of the Republic of Venezuela and evidence of his receipt of athletic scholarship funds from the “Fundadeporte” organization and the “National Sports Institute” of Venezuela. The plain language of this criterion, however, requires the petitioner to submit evidence of a high salary “in relation to others in the field.” The petitioner offers no official wage statistics as basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no evidence that the petitioner has earned a level of compensation that places him among the highest paid riflemen in Venezuela or the United States.

In this case, we find that the evidence presented by the petitioner satisfies only two of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Further, the petitioner has not submitted evidence establishing that he has sustained national or international acclaim as a competitive rifleman or instructor subsequent to 2003. The benefit sought in the present matter, however, specifically requires extensive documentation establishing “sustained national or international acclaim.” See section 203(b)(1)(A)(i) of the Act. The alien entered the United States on November 19, 2003 as a B-2 nonimmigrant visitor for pleasure. As such, he was not authorized to engage in employment. Indeed, counsel admits on appeal that the alien’s ability to engage in competitive shooting has been hampered by his lack of permanent resident status during the 17-month period he has been living within the United States.

We concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. The director also found that the record lacked clear evidence that the petitioner was coming to the United States to continue work in his area of expertise.

On October 19, 2005, the director issued a request for evidence notice instructing the petitioner to submit evidence pertaining to the criterion at 8 C.F.R. § 204.5(h)(5). The petitioner failed to submit evidence relating to this criterion as requested by the director. In a December 5, 2005 letter responding to the director’s request for evidence, counsel stated: “The [petitioner] will continue competitive shooting after his being granted status in the United States and will seek employment as an instructor with a recognized gun club, school program or other programs of riflery.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. 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).

On appeal, counsel further addresses the petitioner’s intent to work in the United States stating:

The [petitioner] is in an almost untenable position as far as his field of endeavor in the United States. People in the United States are extremely reluctant to issue letters of proposed employment to an alien who does not have permanent residence. This holds doubly true when it is an instructor involving firearms. The [petitioner] showed in the documentation presented with his petition that he is a qualified instructor of firearms and competitive shooting. Even importing his own rifle for shooting is an arduous task. As stated previously the [petitioner] will continue his competitive shooting and will seek employment as an instructor when he is granted permanent residence.

The regulation at 8 C.F.R. § 204.5(h)(5), however, requires “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 record includes no such evidence.

In light of the above, 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.