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U.S. Citizenship  
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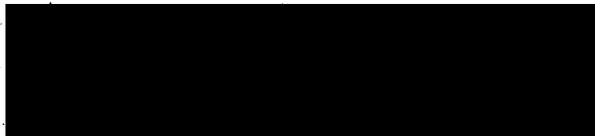


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 03 2007  
WAC 05 124 51018

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.

*Maura Deadrick*

Robert P. Wiemann, Chief  
Administrative Appeals Office

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**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. While not all of the director's analysis is persuasive, we concur with the director that the petitioner has not demonstrated that she enjoyed sustained national or international acclaim as of the date of filing. Specifically, the most persuasive evidence submitted relates to two regulatory criteria, awards for excellence and exclusive memberships pursuant to 8 C.F.R. § 204.5(h)(3)(i),(ii), but even the strongest of that evidence is not indicative of *sustained* acclaim as of the date of filing. Regardless, as will be discussed below, the record falls far short of establishing that the petitioner meets a third criterion as required.

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 a track and field 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 petitioner has submitted evidence that, she claims, meets the following criteria.<sup>1</sup>

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

As evidence to meet this criterion, the petitioner relies on official meet results posted on the Internet. The director concluded this was "secondary" evidence that could not serve to establish that an alien meets this criterion. On appeal, counsel challenges this conclusion, noting that the results provided were official results posted on official websites.

While newspaper coverage may be "secondary" evidence of the results of an athletic event, official results published by the sponsors of the event are credible evidence that the director should have accepted. At issue, then, are whether the petitioner's results rise to the level of lesser nationally or internationally recognized prizes or awards and whether they are indicative of *sustained* acclaim on March 30, 2005, when the petition was filed.

At the outset, we note that counsel has asserted that some competitions are so exclusive that merely qualifying to race in them is a prize or award for excellence. We disagree. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the submission of evidence of the alien's receipt of a lesser nationally or internationally recognized prize or award. In athletics, qualifying to compete is a prerequisite to winning an award or prize, but is not the award or prize itself. Even if we accepted that qualifying to compete is somehow "comparable" to actually winning, and we do not, the regulation at 8 C.F.R. § 204.5(h)(4) provides that comparable evidence will only be considered where a criterion is not readily applicable to the alien's field. The petitioner has not established that awards or prizes are not applicable to her field of track and field. In fact, the record contains ample evidence that awards and prizes are issued in track and field. Thus, we will only consider the petitioner's actual awards and prizes. In addition, we will not consider the petitioner's junior awards, as they do not represent competition against the best athletes nationally.

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

The petitioner was the Polish champion in the 800 meter run in 1998 and the Polish champion in the same event indoors in 1998 and 2000. The petitioner earned her best time, 2:00.31, at the European Outdoor Championship in 1998, but still came in third in a semifinal heat. The record contains no evidence that she won an award or prize at this competition. In July 1998, the petitioner finished second at the Nurnberg International Meeting.

The petitioner submitted a University of Southern California (USC) press release about the school's performance at the 2002 NCAA Outdoor Track and Field Championships. The press release indicates that the petitioner "earned All-American honors and scored two points for USC by finishing seventh in the 800m in a time of 2:06.35. It's the fifth consecutive year that a Woman of Troy has scored in the 800m at the NAAs." In 2002, the petitioner finished second for USC at the Track and Field Invitational College and Club event. The record contains no information about the national reputation of this event.

The petitioner finished first in the 800 meter run at the [REDACTED] Invitational in 2004, representing Poland. The University of California, Los Angeles (UCLA) hosts the competition, consisting of collegiate teams "and some of the nation's elite athletes" competing in the invitational. The petitioner, whose affiliation is listed as "unattached," also finished first in the 800 meter run at the Stanford University Invitational in 2004. This competition accepts a limited number of "open athletes" in order "to enhance the quality" of the competition. In order to qualify for consideration as an open athlete in the 800 meter run, the competitor must have finished the event in 2:12 or less in 2004.

The petitioner did submit evidence that the Home Depot Invitational awards more than \$140,000 and attracts more than 40 Olympians as well as others seeking Olympic "A" standards. While the record demonstrates that the petitioner competed at this event, the record does not reflect that she won any award or prize at this event.

The petitioner's awards while competing for the Polish national team and her national championship status are notable. The most recent of these awards, however, was in 2000, approximately five years before the petition was filed. In order to demonstrate that she enjoyed *sustained* acclaim as of the date of filing, the petitioner must demonstrate continued awards and prizes more proximate to the filing of the petition. Moreover, the petitioner must also be eligible 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). Thus, while the petitioner submitted evidence of awards and prizes received after the date of filing, we cannot consider these awards as evidence of the petitioner's eligibility as of that date.

On appeal, the petitioner submits letters from [REDACTED] President of the Los Angeles Sports Council, and the petitioner's personal coaches attesting to the caliber of athletes competing at the [REDACTED] and Stanford University Invitationals. Far more persuasive would have been letters from sports authorities outside of California confirming the national reputation of these invitationals or media coverage of the events themselves in national trade journals or general media.

Considering the evidence as a whole, we are persuaded that the petitioner meets this criterion, although we note that her awards prior to 2001 appear to outshine her more recent accomplishments.

*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 has competed for USC and is a member of VS Athletics Track Club, one of 30 USA Track and Field Elite Développement Clubs. The record does not establish that she was a member of the VS Athletics Track Club as of the date of filing. Regardless, college teams and elite athletic clubs 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 or sponsorship by an elite athletic club can serve to meet this criterion. In addition, counsel asserts that the petitioner's best time would qualify her for the U.S. Olympic team but that Poland sends few athletes and, thus, requires a lower time to qualify. Counsel notes that the petitioner's best time is below some of the winning times in some Olympic heats. Counsel is not persuasive. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership, not potentially qualifying for membership. Moreover, the fact that the petitioner's best time is lower than some of the winning times in some Olympic heats several years later is not persuasive. We will not speculate that the petitioner could have matched or outperformed her best time had she been there. The record does not reflect that the petitioner routinely runs the 800 meter run at or close to her best time.

We acknowledge that the petitioner competed for the Polish national team. The record, however, does not establish that the petitioner was a competing member of the Polish national team after 2000. In light of the above, the petitioner has not submitted recent evidence that serves to meet this criterion. Even if we were to conclude that the petitioner meets this criterion, and we do not, the evidence falls far short of meeting a third criterion as required.

*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 two 1995 articles and a 1997 article appearing in Polish newspapers with an unknown circulation. In response to the director's request for additional evidence, the

petitioner submitted a July 2005 article in an unidentified English-language publication, a July 2005 article in *News of Polonia* and an August 2005 article in *Ziemia Gorzowska*. Counsel asserts that *News of Polonia* is a monthly newspaper distributed to the Polish community in southern California and that *Ziemia Gorzowska* is one of the two largest weekly newspapers in Poland. 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). The petitioner did not submit any evidence of the circulation of these newspapers. Moreover, all of the new articles postdate the filing of the petition.

Finally, the petitioner submitted an undated letter from the Chief Editor of [REDACTED] advising that a show about the petitioner would air in Poland in October. Counsel asserts that the show would air in October 2005, after the filing date of this petition. The editor indicates that the show reaches 300,000 television viewers in Western Poland. He does not clearly indicate that this show is televised nationally. Regardless, the record does not establish that this show aired prior to the date of filing. Similarly, the petitioner submitted a letter from [REDACTED], Host of "The Competitors" radio show and publisher of *Competitor Magazine* discussing upcoming coverage of petitioner. All of this coverage postdates the filing of the petition.

The director's discussion of this criterion does not appear to relate to the facts of this case or even the petitioner's field of athletics. Rather, the director concluded that "citation of the work of others is expected and routine." As noted by counsel on appeal, however, the petitioner was not merely "cited" or named, but is the subject of full-length articles.

While we find the director's analysis insufficient, we agree that the materials submitted cannot serve to meet this criterion. The initial materials date from more than eight years prior to the date of filing and, thus, cannot establish *sustained* acclaim at that time. We cannot consider the materials submitted in response to the director's request for additional evidence because they postdate the filing of the petition. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) expressly requires that the published material appear in professional or major trade publications or other major media. The petitioner has not demonstrated that any of the publications that have covered her enjoy a national circulation.

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

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

The director concluded, without discussion, that the record did not establish that the petitioner meets this criterion. Additional discussion is warranted.

[REDACTED], the petitioner's former coach in Poland, asserts that the petitioner received a monthly salary of \$200 while a member of the Polish Track and Field Association. Mr. [REDACTED]

further indicates that the petitioner won 16 medals for a total of \$1,600. Mr. [REDACTED] suggests this award money represents the petitioner's total over six years. In addition, a Polish company agreed to sponsor the petitioner with bi-monthly payments of \$1,900 in 2005. Counsel attempts to compare this with the per capita income in Poland, although the data provided is actually Gross National Product per capita. Regardless, the petitioner's remuneration must compare with the highest remuneration for track and field athletes, not the average income for all citizens of Poland.

Further, the petitioner submitted evidence that she has been receiving "athletic aid" from USC totaling \$26,956 tuition grant-in-aid, \$8,512 as a subsistence grant and \$400 for books in 2002-2003 and slightly less in Fall 2003. On appeal, the petitioner's coach at USC asserts that the petitioner had a full \$40,000 scholarship at USC. This assertion is not supported by the evidence submitted previously. Regardless, an athletic scholarship is not remuneration for services in her occupation. Specifically, academic study, including athletic participation, is preparation for employment in an occupation. It is not an occupation in and of itself.

Even if we considered the petitioner's athletic aid as remuneration for professional services, and we do not, the petitioner has not provided sufficient comparable data establishing the highest remuneration for track and field athletes. Rather, the petitioner submitted evidence that the 75<sup>th</sup> percentile of professional athletes earns a base pay of \$31,665 or more. The petitioner's remuneration need not merely fall within the top 75<sup>th</sup> percentile for all professional athletes. Rather, the petitioner's remuneration must compare with the highest remuneration for her occupation. Moreover, "professional athletes" is too broad a category. The petitioner need not demonstrate that her remuneration compares with the top baseball, hockey and football players nationally. Thus, the data provided is insufficient, as it does not specify the very top remuneration received by track and field athletes.

In response to the director's request for additional evidence, the petitioner submitted evidence of club and corporate support as well as prize money earned after the date of filing. We cannot consider this documentation as evidence of eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

*Comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4)*

Initially, counsel asserted that the petitioner was submitting "comparable evidence" pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) but did not assert that the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3) are, in general, inapplicable to the petitioner's field. Counsel then references letters from the Consul General of Poland in Los Angeles and the opinions of the petitioner's coaches but does not explain how this evidence is "comparable" with the objective evidence required under the ten regulatory criteria or to the evidence required under a specific criterion that is inapplicable to the petitioner's field. On appeal, the petitioner submits additional letters from the petitioner's coaches, a fellow athlete at VS Athletics Club and sports officials in California. The opinions regarding the significance of the events at which the petitioner won awards and prizes have been considered above. In addition, the authors provide general praise of the petitioner and rank her highly in the field.

The regulation at 8 C.F.R., § 204.5(h)(4) permits the submission of “comparable” evidence where the criteria are not “readily applicable.” In order to rely on this provision, the petitioner must first demonstrate that the regulatory criteria are not readily applicable. The petitioner’s inability to meet any of the criteria does not necessarily make them inapplicable to her field. The criteria are designed for several fields and will not all be applicable to a specific field. The petitioner in this matter has not demonstrated that the criteria as a group are not applicable. In fact, the petitioner claims to meet four criteria.

Even if the petitioner had established that the regulatory criteria were inapplicable, the petitioner has not established that the evidence provided is “comparable” to the objective evidence of acclaim normally required under the ten criteria listed at 8 C.F.R. § 204.5(h)(3). The subjective opinions of the petitioner’s coaches, sponsors, fellow athletes or even independent experts, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

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 track and field runner to such an extent that she may be said to have achieved *sustained* national or international acclaim as of the date of filing or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a track and field 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.