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FEB 19 2008

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:
SRC 06 112 51494

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:

SELF-REPRESENTED

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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. 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 determined the petitioner had not established that he would continue work in his area of expertise in the United States.

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 into 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, 60898-99 (Nov. 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 February 23, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a "tutor and mentor" for student athletes. At the time of filing, the petitioner was working as a biology tutor and Assistant to the Tutor Coordinator at the University of South Carolina. A letter of support from [REDACTED], Academic Advisor/Tutor Coordinator, Academic Enrichment Center, University of South Carolina, states:

It is my hope that you will allow [the petitioner] the opportunity to continue to work and study at the University of South Carolina, especially within his current position as a Biology tutor and an Assistant to the Tutor Coordinator.

[The petitioner's] current duties include Biology tutoring primarily, advertising for tutoring positions, recruiting tutors, assisting in tutor orientation for the upcoming school year, class checking for student-athletes, study hall and tutor sessions monitor. I plan on expanding [the petitioner's] duties to involve more tutoring and scheduling.

The biggest asset that [the petitioner] brings is as a role model as a former student-athlete. I work very closely with the Track and Field team – the sport [the petitioner] participated in. The students benefit from [sic] his experience as an All-American track athlete, All-American Academic student-athlete and he was named United States Track Coaches Association Student-Athlete of the year in 2002.

The tutoring program has functioned at a high level during the 2004/2005 school year in large part to the efforts of [the petitioner].

The petitioner also submitted an April 25, 2005 letter of support from his former coach, [REDACTED], Head Track and Field Coach, University of South Carolina, stating.

I have known [the petitioner] for about four and a half years since his freshman year at the University of South Carolina. I recruited [the petitioner] from his native country of Botswana to become a member of our track and field team based on his outstanding track record.

[The petitioner] proved to be one of the world's best athletes in his event during his debut season (2000/2001) with my track and field team. As a freshman in 2001, [the petitioner] won two South Eastern Conference Track and Field titles in the 800m event and one NCAA title in the same event. [The petitioner] also represented his country at the World University Games in Beijing, China where he was awarded a bronze medal for his third place finish in his event. He qualified to represent his country at the World Championships in Track and Field in Edmonton Canada the same year. [The petitioner] also ran at a series of international events in Canada, where he was named Athlete of the Meet after he set his country's national record in his event and winning the race.

In 2002, [the petitioner] was named the National Men's Track and Field Scholar-Athlete of the Year based on his outstanding performance in both academics (with a GPA of 4.0) and sports. He won two SEC and two NCAA individual titles in his event. He also represented his country at various international meets, including the Commonwealth Games in Manchester, England, where he managed fourth place. [The petitioner] was also named the Outdoor Region Athlete of the Year in 2002. He was also captain of the school team in 2002 through 2003. In 2003, his final year as a member of the University of South Carolina track and field team, he represented his country at the World Championships in Paris, France. The Olympic year, 2004 was [the petitioner's] final semester/year in college and his goal was to graduate with a good GPA, thus spending less time training.

The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). According to Part 3 of the Form I-140 petition and the other documentation initially submitted by the petitioner, he is seeking employment in the United States as a tutor. There is no evidence that the petitioner remains active as a competitor in national or international running competitions. In fact, the April 25, 2005 letter from Curtis Frye states that 2003 was the petitioner's "final year as a member of the University of South Carolina track and field team." The record includes no evidence showing that the petitioner has sustained national or international acclaim as a runner subsequent to 2003 or that he intends to continue competing as a runner rather than working primarily in another occupation such as a tutor or a juvenile correctional officer.¹ This issue will be further addressed below.

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). 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 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 evidence that he was named the "2002 Men's National Scholar-Athlete of the Year" for National Collegiate Athletic Association (NCAA) Division I by the United States Track Coaches Association. The petitioner also submitted evidence that he won a bronze medal at the World University Games in 2001 and multiple championship titles in the NCAA. The record, however, includes no evidence showing that the petitioner has won any significant races since 2003 or that he intends to continue competing as runner in the United States. Further, none of the preceding awards relate to the petitioner's work as a biology tutor. As such, it has not been established that these awards were in the petitioner's "field of endeavor." Further, we do not find that awards limited by their terms to college athletes (rather than open to the entire field) are evidence 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). CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.² Likewise, it does not follow that a runner who has had

¹ The record reflects that the petitioner has been employed full-time as Juvenile Correctional Officer since July 10, 2006.

² While we acknowledge that a district court's decision is not binding precedent outside of the district in which the case arose, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

past success competing at the university level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

On appeal, the petitioner submits a January 4, 2007 letter from ██████████, Chief of Security and Operations, Broad River Road Complex, South Carolina Department of Corrections, congratulating the petitioner for being “selected as the Juvenile Correctional Officer for ██████████ Campus for the month of December 2006.” This award reflects local or institutional recognition by the petitioner’s immediate employer rather than national or international recognition for excellence in tutoring. Further, this award was issued to the petitioner subsequent to the petition’s filing date. A petitioner, however, 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, 49 (Comm. 1971). Accordingly, the AAO will not consider this award in this proceeding.

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

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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or broadcast. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted articles that mention his accomplishments as a runner, but none of the articles relate to his work as a biology tutor, the field for which classification is sought. Further, the majority of the preceding articles were not primarily about the petitioner. Finally, there is no evidence (such as circulation

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of ██████████’s ability with that of all the hockey players at all levels of play; but rather, ██████████’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that CIS’s interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

statistics) showing that the articles submitted by the petitioner were published in professional or major trade publications or other form of major media.

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

In this case, 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 sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, we concur with the director's determination that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

As stated previously, the director also determined the petitioner had not submitted clear evidence that he would continue work in his area of expertise in the United States. According to Part 3 of his Form I-140 petition and the letter from [REDACTED] of University of South Carolina, the occupation in which the petitioner initially sought employment in the United States was as a tutor. The petition, however, was accompanied by evidence of the petitioner's achievements as a collegiate runner. In response to the director's request for evidence, the petitioner submitted a November 13, 2006 letter from the South Carolina Department of Juvenile Justice stating that he was employed as a full-time Juvenile Correctional Officer since July 10, 2006. On appeal, the petitioner states that he remains employed by the South Carolina Department of Juvenile Justice. The regulation at 8 C.F.R. § 204.5(h)(5) 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." In this case, there is no clear evidence that the petitioner will continue work as a biology tutor or runner in the United States. With regard to the petitioner's job change and the evidence relating to his current employment with South Carolina Department of Juvenile Justice, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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.