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FILE: SRC 06 213 52590 OFFICE: TEXAS SERVICE CENTER Date: FEB 20 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

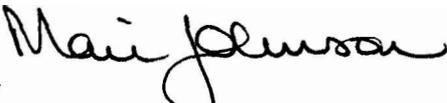
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, 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 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 the petitioner had not established that she is one of that small percentage who have risen to the very top of her field of endeavor.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

This petition, filed on July 6, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an equestrian competitor and instructor. According to her resume, Form G-325A, Biographic Information, and other documentation in the record, the petitioner has resided in Florida since December 2003 and worked as a

riding coach and instructor for Southwest Ranches, Avalon Horse Farm, and the Caloosa Equestrian Community.

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 showing, *inter alia*, that she received a team gold medal and a silver individual medal at the XIV Bolivarian Games in 2001. The record includes adequate documentation to demonstrate the significance of the aforementioned awards. As such, we find that the petitioner meets this criterion.

The statute and regulations, however, require the petitioner's national or international acclaim as an equestrian to be *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). In this case, there is no evidence showing that the petitioner, or any riders under her direct tutelage, have won nationally or internationally recognized prizes or awards since she came to the United States in 2003. Further, information submitted on appeal reflects that there are several levels of dressage competition in the United States: introductory, training, first, second, third, fourth, and the highest level, Grand Prix. The international governing body for the sport, the Federation Equestrian International (FEI), identifies four levels of competition: Prix St. Georges (beginner), Intermediaire I, Intermediaire II, and Grand Prix. The petitioner initially submitted evidence that she finished 5<sup>th</sup> place in the "Training Level" at the Palm Beach Dressage Derby Series Kickoff in January 2005. The petitioner also submitted evidence that she placed 6<sup>th</sup> out of six competitors in the "Training Level" and 2<sup>nd</sup> out of four competitors in the "Second Level" at the Gold Coast Dressage Association's Gold Coast Opener Festival in May 2005.

On appeal, the petitioner submits evidence that she placed 13<sup>th</sup> out of 22 competitors in the "FEI Prix St. Georges" level and 14<sup>th</sup> out of 19 competitors in the "FEI Intermediaire I" level at the Cosequin Wellington Dressage competition in February 2007. At the Wellington Classic Dressage Challenge II in March 2007, the petitioner placed 8<sup>th</sup> out of ten competitors in the "Training Level" and 5<sup>th</sup> out of seven competitors in the "First Level." With regard to the competition results submitted on appeal, we note that the petitioner participated in these events 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). Nevertheless, there is no evidence that the petitioner or the riders she has regularly trained have

received national or international recognition at the very top level of her sport (such as the Grand Prix level) since her arrival in the United States in 2003.

With regard to the petitioner's prizes, awards, and rankings from competitions below the Grand Prix level, we do not find that such evidence indicates that she "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.<sup>1</sup> Likewise, it does not follow that an equestrian who has had past success competing or instructing youth and amateurs in lower level dressage competition 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."

Although the petitioner meets this criterion based on the awards she earned in Colombia and Ecuador prior to 2003, the weight of her evidence is diminished as there is no indication that she has sustained national or international acclaim through recognition at the very top of her field during the three year period preceding the petition's filing date.

*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 recommendation letter from \_\_\_\_\_ indicating that the petitioner was a member of the board of directors and technical committee when she worked at the Bacata Equestrian School. The petitioner also submitted a recommendation letter from \_\_\_\_\_ of the Lindaraja Academy of Equestrians stating that the petitioner worked there as an instructor. The petitioner's work for the preceding institutions is not tantamount to "membership in associations in the field" and does not satisfy the plain language of this regulatory criterion. The petitioner also submitted evidence of her membership in the United States Equestrian Federation (USEF), the United States Dressage Federation, the Gold Coast Dressage Association, the Equestrian Federation of Colombia, the Equestrian League of Santa Fe of Bogota, and the Equestrian League of Cundinamarca. The record, however, includes no evidence (such as

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<sup>1</sup> 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:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine'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.

membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. As such, the petitioner has not established that she 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.*

The petitioner's appellate submission does not address this criterion.

In general, 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 level from a local publication. 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.<sup>2</sup>

The petitioner submitted two event programs relating to the 2001 Bolivarian Games, an internet article posted on [www.horsesport.org](http://www.horsesport.org), a March 21, 2001 article entitled "Cota Makes Selection for Training" in an unidentified newspaper, an undated article entitled "Selective Equestrian" in *El Colombiano* newspaper, and printed results from the "2001 Bolivarian Games." The authors of the preceding materials were not identified as required by the plain language of this regulatory criterion. Further, none of the preceding materials were primarily about the petitioner. Nor is there evidence (such as circulation statistics) showing that the preceding materials were published in professional or major trade publications or some other form of major media.

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

*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 specification for which classification is sought.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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). For example, judging a

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<sup>2</sup> 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.

national dressage competition for top equestrians (such as Grand Prix riders) is of far greater probative value than judging a local competition for youth or novice riders.

The petitioner submitted certificates of attendance issued by the Equestrian Federation of Colombia for two “Judges of Training” courses taken by her from June 16–19, 1997 and November 20–21, 1997. The petitioner also submitted letters of support discussing additional judge training courses she has taken. In an October 20, 2006 letter responding to the director’s request for evidence, counsel states: “[The petitioner] is a National A Judge which is the highest level of judgeship which an individual could attain in Colombia.” The record, however, includes no evidence that such certification is the “highest level of judgeship” for dressage competition. 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).

The petitioner also submitted the following:

- 1) Certificate of honorable mention from the Equestrian Federation of Colombia for “collaboration as judge in the official events of Training for the year 2002.”
- 2) Certificate of honorable mention from the Equestrian Federation of Colombia for “collaboration as judge in the official events of Training for the year 2000.”
- 3) Certificate of honorable mention from the Equestrian League of Santa Fe of Bogota for “collaboration as judge in the concourses for Training organized during the Year 2000.”
- 4) Certificate of honorable mention from the Equestrian League of Santa Fe of Bogota for “collaboration as judge in the concourses for Training organized . . . in 1999.”
- 5) Certificate of honorable mention from the Equestrian Federation of Colombia for judging “a major number of concourses for Training in 1996.”

There is no evidence showing the specific competitive events the petitioner judged, the names of the equestrians she evaluated, their level of expertise, or any other documentation of her assessments (such as a judge’s scoring sheet). Nor is there evidence establishing the level of prestige associated with judging the preceding events. Further, there is no evidence that the petitioner has judged any dressage competitions since 2002. As such, the petitioner has not demonstrated that whatever level of acclaim she had in Colombia has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The petitioner’s response to the director’s request for evidence included an article in the July/August 2006 issue of *Equestrian* entitled “How to Become a Judge.” This article states:

For 2006, the USEF had 1,671 licensed judges who held 3,458 licenses.

\* \* \*

Judge classifications are signified by letters. There are six categories of judges. Licensed judges are classified as senior (S), registered (R), recorded (r), Special (SJ), guest (GJ) and learner (LJ) under

Chapter 10 of the *USEF Rule Book*. The general progression follows from learner judge (LJ) to recorded judge (r) to registered judge (R).

Senior judges (only found in dressage) may officiate in all Federation and FEI-level dressage classes.

The preceding article discusses the categories of judges for competition in the United States, but there is no evidence that the petitioner has judged any competitions sanctioned by the USEF or the FEI since her arrival in this country in 2003. Without evidence that the petitioner's participation as a judge at past events involved evaluating experienced riders in the same manner as a "senior" USEF judge, for example, or was otherwise consistent with sustained national or international acclaim, we cannot conclude 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.*

The petitioner's appellate submission does not address this criterion.

In response to the director's request for evidence, the petitioner submitted letters of support from the President of the Equestrian Federation of Colombia and the President of the Equestrian League of Cundinamarca as evidence for this criterion. These letters discuss the petitioner's activities and accomplishments in her field, but they do not provide substantive information about the nature of her role within the preceding organizations. The petitioner also submitted recommendation letters indicating that she worked for the Bacata Equestrian School and the Lindaraja Academy of Equestrians. With regard to the preceding four organizations, the record lacks evidence that they have distinguished reputations. Further, there is insufficient information about the petitioner's specific organizational duties and responsibilities to demonstrate that she performed in leading or critical role in the positions she held for the above organizations. Nor is there any evidence demonstrating how the petitioner's role differentiated her from the other equestrians working directly for these organizations (such as instructors and senior officials). As such, the petitioner has not established that she was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Finally, there is no evidence establishing that the petitioner has performed in a leading or critical role for a distinguished equestrian organization here in the United States.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, 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 her national or international acclaim has been sustained. The record, however, lacks evidence of achievements and recognition subsequent to the petitioner's arrival in the United States in 2003 showing that she has sustained national or international acclaim as an equestrian.

Beyond the regulatory criteria, the petitioner submitted several letters of support discussing her talents as an equestrian competitor and instructor. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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

(Commr. 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of achievements and recognition that one would expect of an equestrian who has sustained national or international acclaim. While the letters of support provide information about the petitioner's activities and experience, they are not adequate to demonstrate that she is one of that small percentage who have risen to the very top of the field. Further, many of the letters have already been addressed above in the context of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The record reflects that CIS approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner to perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. This prior approval does not preclude CIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. 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.