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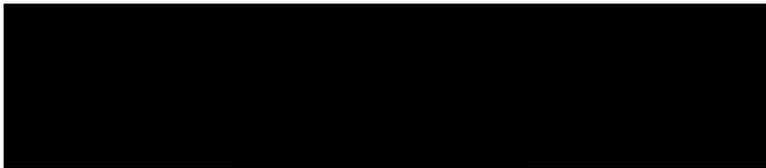
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U.S. Citizenship
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FILE: [REDACTED]
SRC 06 259 52269

Office: TEXAS SERVICE CENTER Date: FEB 28 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 Director, Texas 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. For the reasons discussed below, we find that the petitioner relies too heavily on witness letters. While we acknowledge that the record does contain some supporting objective evidence, which we will consider in detail below, that evidence is insufficient to meet the necessary regulatory criteria.

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, 60898-9 (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.

According to Part 6 of the Form I-140 petition, the petitioner's proposed area of employment is as a "head horse trainer." 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.

Witness Letters and Comparable Evidence

On appeal, counsel relies on the dictionary definition of acclaim, "praise," concluding that "there can be no better evidence of acclaim than the laudatory opinions of those recognized as great in the field." Counsel asserts that witness letters should not be ignored even where there is insufficient supporting objective evidence, which counsel further asserts is not the case in this matter.

The opinions of experts in the field, 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. 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and talent are less persuasive than well-supported letters that explain the significance of evidence relating to the regulatory criteria. Ultimately, however, 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.

Counsel initially asserted that the petitioner meets four of the regulatory criteria: prizes or awards for excellence pursuant to 8 C.F.R. § 204.5(h)(3)(i), membership in exclusive associations pursuant to 8 C.F.R. § 204.5(h)(3)(ii), published materials about the petitioner pursuant to 8 C.F.R. § 204.5(h)(3)(iii) and performing a leading or critical role criterion pursuant to 8 C.F.R. § 204.5(h)(3)(viii). In addition, counsel asserted that the petitioner was submitting "comparable evidence" in the form of witness letters pursuant to 8 C.F.R. § 204.5(h)(4). Counsel acknowledged, however, that 8 C.F.R. § 204.5(h)(4) only permits the submission of comparable evidence where the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3) do not "readily apply."

On April 13, 2007, the director noted counsel's initial claim that "comparable evidence" was being submitted in this matter and requested an explanation as to how the regulatory criteria do not "readily apply." In the alternative, the director requested additional evidence relating to the criteria claimed. In response, counsel addressed the above criteria and did not discuss the submission of "comparable evidence." In his final decision, the director concluded that without evidence that the criteria at 8 C.F.R. § 204.5(h)(3) do not "readily apply," the consideration of "comparable evidence" was not necessary.

On appeal, counsel asserts that the director erred in requiring the petitioner to "affirmatively invoke 8 C.F.R. § 204.5(h)(3)." Counsel mischaracterizes the director's decision. The director was merely applying the plain language of 8 C.F.R. § 204.5(h)(4), which allows the submission of "comparable evidence" where the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3) do not "readily apply." Thus, we find it reasonable that the petitioner be required to make some showing that the regulatory criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply before relying on the submission of "comparable evidence." In this matter, counsel has asserted that the petitioner meets four of the regulatory criteria. Thus, counsel does not appear to be asserting that these criteria are not readily applicable to the petitioner's field. Regardless, we do not agree that the necessarily subjective opinions of experts in the field, while useful evidence, can be considered "comparable" to any of the ten objective criteria outlined at 8 C.F.R. § 204.5(h)(3).

Standard of Proof

On appeal, counsel asserts that the director's statement that the evidence "must clearly demonstrate" eligibility demonstrates that the director applied too high a standard, noting that the proper standard is "preponderance of the evidence."

While the director used the phrase "clearly demonstrate" instead of "preponderance of the evidence," the director appears to be using the common usage of the word "clearly" as opposed to articulating a higher standard of proof, such as "clear and convincing." Regardless, for the reasons discussed below, we do not find that the petitioner has established his eligibility by a preponderance of the evidence.

Area of Expertise and Intended Area of Employment

As stated above, the petitioner indicated on the petition that he seeks to work as a "head horse trainer." The director concluded that the petitioner had not demonstrated that horse jumpers and trainers rely on the same skill set and, thus, found that the petitioner must demonstrate sustained national or international acclaim as a trainer. On appeal, counsel discusses the importance of the horse, in addition to the skill of the rider, and asserts that the terms "horse trainer" and "equestrian jumper rider" are used interchangeably and mean the same thing.

Before we discuss the evidence on this issue, we review the law. Section 203(b)(1)(A)(ii) limits this classification to aliens who seek "to enter the United States to continue work in the area of

extraordinary ability.” The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to “continue work in the area of expertise.” While an athlete and a coach/trainer certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching/training are not presumptively the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Thus, it is the petitioner’s burden to demonstrate that his proposed employment is within his area of expertise.

In response to the director’s request for additional evidence, counsel asserts:

[The petitioner’s] skills as an elite, internationally known show jumper are the foundation for his extraordinary ability as a Head Horse trainer; his ability to train horses to compete at the Grand Prix level is predicated on the fact that he himself is an award winning jumper, achieving international honor and acclaim into the present time. His unequalled skills as a trainer are a direct result of his supreme skills as a horse jumper; he has transferred his extraordinary ability handling and jumping horses to the position of Head Horse Trainer wherein he has trained four horses from novice to Grand Prix level – an extraordinary feat for even the most skilled trainer. His protégés have won or placed highly in nationally recognized amateur and junior amateur US competitions because of [the petitioner’s] extraordinary ability and expertise in his field of endeavor.

The petitioner submitted a letter from [REDACTED] a managing partner of [REDACTED] where the petitioner works as the Head Trainer. She explains that the petitioner has improved the training provided by the center, noting her daughter’s own improvement and successful competition at a children’s event under the petitioner’s tutelage.

On appeal, the petitioner submits a letter from [REDACTED] President of the West Coast Active Riders, who asserts:

The term “horse trainer” refers to training horse and/or rider. We train the horses we ride to jump and compete. It usually takes many years of showing and training before horses are able to jump and compete at the Grand Prix level. There are some horse trainers who hire others to ride, but they are usually older professionals who can no

longer compete due to age or injury. They continue to be called horse trainers as they did when they were younger and competed and rode themselves.

We are not persuaded that acclaim as a rider is presumptive evidence that training other riders is within that rider's area of expertise. The very fact that the petitioner has worked training other riders establishes that there are riders who compete under the tutelage of others on horses they have not themselves trained. Thus, riding and training horses or riders are not always the same occupation. That said, [REDACTED]'s assertion that those with the title "horse trainer" may also include those who compete is supported by the fact that, in this matter, the petitioner, a horse trainer, continues to compete. The petitioner clearly seeks to enter the United States to continue competing as a rider. Thus, we are satisfied that he need only demonstrate sustained national or international acclaim as a rider.

Sustained Acclaim and Primary Evidence

On appeal, counsel asserts that CIS must take into account the difficulty in securing evidence of old achievements. The regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

We find that where the regulations require evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. Secondary evidence might be newspaper reports of the competition results. Affidavits attesting to awards, therefore, would need to "overcome the unavailability of both primary and secondary evidence."

While we will take into account when the petitioner's achievements took place, we reiterate that the petitioner must demonstrate *sustained* national or international acclaim. We find that sustained acclaim requires continued acclaim as of the date of filing. That said, we do not discount evidence that is not recent *if* other evidence sufficient to meet a regulatory criterion establishes continued acclaim as of the date of filing. Nevertheless, the petitioner must also demonstrate eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Thus, we will not consider achievements after the date of filing.

The Regulatory Criteria at 8 C.F.R. § 204.5(h)(3)

The petitioner has submitted evidence that, he claims, meets the following criteria.¹

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

The director did not explicitly discredit the petitioner's awards. On appeal, Mr. Simpson asserts:

I am informed one of the reasons [the petitioner's] green card case was denied is because he has not won a major size award. First, this is not the way we judge people in our industry. Surely, those who win an Olympic medal are exceptional. But being a constant top competitor who brings along young horses to compete in Grand Prix events is just as important for gauging whether one is an extraordinary equestrian as one who wins a big prize. Judging equestrians is more difficult than horse racing where there are a few big prize money purses, such as the Kentucky Derby or Belmont States [sic]. Show jumping in the United States does not have such big prizes. For us, a \$25,000 Grand Prix (which [the petitioner] has won) is a major win.

We agree that the issue is not the amount of the prize but whether it is nationally or internationally recognized in the field. That said, we interpret "nationally or internationally recognized" to include those competitions with a national pool of competitors. The purpose of the regulatory criteria is to provide examples of documentation that may be indicative of or consistent with national acclaim. A prize or award for which the most experienced and renowned members of the field nationally cannot or do not compete is simply not indicative of or consistent with either national or international acclaim or inclusion among the small percentage of those at the top of the field nationally. Moreover, the plain language of the regulation requires the "receipt" of awards or prizes. Thus, we reject the implication that "being a constant top competitor," without the actual "receipt" of nationally or internationally recognized awards or prizes could serve to meet this criterion or otherwise establish eligibility.

Australian Competitions

The petitioner submitted evidence that he won the Stephen O'Reilly Cup in 1980, 1983 and 1984. The materials about this cup reveal that it is organized by the Wyena Pony Club. The petitioner did not submit evidence establishing that this "pony club" competition is open to all riders regardless of age or experience. The petitioner submitted evidence of first, second and third place finishes in various A, B, C and D grade events at the Shepparton Agricultural Show in October 2000. The petitioner finished first and third in the Class 11 A&B Grade Championship at the Barastoc Horse of the Year Show Jumping event in 2000. Newspaper articles reveal that in 2001, the petitioner "won the main A and B

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

Grade class” of the Dandenong Show and finished within the top three in other Australian shows with unknown significance, sometimes in a lesser grade than “B.”

In response to the director’s request for additional evidence, counsel asserts that the Stephen O’Reilly cup is an “elite competition held in Melbourne Australia for over 25 years.” The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel also reiterates the information about how the petition is scored, which is supported in the record by the Internet materials submitted. Nothing in the record, however, supports counsel’s assertion that the cup is considered “elite” in Australia or suggests that the competition has a national pool of competitors and is nationally recognized.

Counsel further asserts that the Shepparton Agricultural Show is sponsored by the city of Greater Shepparton, the fifth largest city in Victoria, Australia. Counsel concludes that the national recognition of this award is apparent from its recording on Cyberhorse.com and listing as one of Australia’s major agricultural shows on an Australian webpage. The record confirms that Cyberhorse.com lists the results of the Shepparton Agricultural Show and that it is listed as a major agricultural show on quadrantaustralia.com. The record does not establish, however, that Cyberhorse.com only lists the results from nationally or internationally recognized shows with a national pool of competitors or that inclusion as a major *agricultural* show implies that the horse jumping competition associated with the show is in and of itself nationally recognized as a horse jumping event with a national pool of competitors.

Counsel asserts that the Barastoc Horse of the Year show is “arguably the best and most important horse show” in Australia. The petitioner submits promotional materials about the show on Ridley AgriProducts’ website. The promotional materials indicate a horse vendor will use Barastoc potential as a gauge of the horse’s star potential and that the selections at this competition are based on workouts “designed to show the horse in all paces from both sides.” That said, the February 23, 2000 article in the *Weekly Times* acknowledges that the Barastoc Horse of the Year show included show jumping courses rather than merely evaluations of the horse’s physique.

U.S. Competitions

The Pacific Coast Horse Shows Association (PCHA) ranked the petitioner tenth for a Leading Rider Award based on money won by members and recorded horses in Open Jumper classics at PCHA sanctioned shows. While the most cash won by a member was \$87,900, the petitioner’s winnings are listed as only \$16,500.

A list of Grand Prix winning horses includes [REDACTED], ridden by the petitioner, who won first place in the [REDACTED] in California and third place in the [REDACTED] in California. The record also demonstrates that the petitioner had a second place finish at the [REDACTED] in 2003 on a different horse.

The petitioner submitted evidence that in the 2005-2006 season for the FEI World Cup, he was ranked eighth in the USA West Coast League as of May 4, 2006. He also submitted evidence of higher and lower standings in the same league earlier in the same season, with one third place finish at the Menlo Charity event on August 13, 2005. The petitioner was also ranked fifth of the foreign competitors in the U.S. West Coast League World Cup Points as of October 4, 2005 and sixth in the same category as of February 27, 2006. The petitioner finished ninth in the Mid-America Show Jumping Cup, although his cash winnings qualified him for the top Rookie of the Year position. The U.S. Equestrian Federation (USEF) ranked the petitioner 77th in grand prix winnings as of November 25, 2005. In December 2005, the petitioner ranked 69th.

Counsel asserts that a rider's "ranking is considered to be an 'award' earned." We disagree. Most nationally or internationally recognized prizes or awards are issued to those who finish third or better in a competition or other selection process. The petitioner has not established that his field differs from this standard. The petitioner has also not demonstrated that rankings are comparable to finishing third or better in a competition with a national or international pool of competitors. For us to consider rankings as "comparable evidence" to prizes or awards, the petitioner would need to demonstrate that this criterion is not readily applicable to his field. The petitioner has not demonstrated that there are no national or international competitions with prizes or awards in his field. We note that there are international show jumping competitions, including an Olympic event in this sport. Thus, the petitioner cannot rely on comparable evidence. Even if we were to consider rankings as comparable evidence to meet this criterion, we would only consider national rankings as comparable to nationally or internationally recognized prizes or awards. We are not persuaded that the petitioner's national ranking, which had never gone above 69th prior to the date of filing, is comparable with a nationally recognized award or prize for excellence.

The petitioner submitted evidence that the United States has two show jumping World Cup leagues, the East and West Coast leagues, and that the United States sends 24 riders to the finals after up to 36 qualifiers. While the record reveals that the petitioner qualified for the World Cup Final in 2007, that qualification postdates the filing of the petition and cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

██████████ associate Chef d'Equipe for the West Coast U.S. Teams, the Chairman of the Board for the West Coast Active Riders and the Co-Chairman of the Board of the United States Equestrian Federation Show Jumping High Performance Committee, asserts that the petitioner has finished as a top rider in nationally accredited Grand Prix competitions and other nationally recognized shows. ██████████ does not assert that any of the Grand Prix or other shows are open to riders nationally. In fact, he implies that the shows are all part of the FEI West Coast World Cup Jumping Series. Significantly, ██████████ characterizes the petitioner as "one of the top riders and trainers on the West Coast."

The petitioner has not established that his U.S. Grand Prix competitions were national in scope. Regarding his “Rookie of the Year” selection at the Mid-America Show Jumping Cup, we note that the most experienced and renowned members of the field do not compete for this selection. In that same competition, he was ranked ninth in comparison with all of the riders.

In light of the above, the petitioner has not established that he meets this criterion. We acknowledge that the evidence relating to this criterion is more extensive than the evidence submitted to meet the other criteria. Even if we were to conclude that the petitioner meets this criterion, however, for the reasons discussed below, the evidence falls far short of meeting at least two of the additional criteria as required.

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.

Initially, counsel asserted that the petitioner meets this criterion through his representation of Australia in international competitions and his inclusion on the “short and long lists for the Olympics.” Counsel further asserts that the petitioner’s recent selection for the Squad-list for the Australian National Team, which would compete at the World Equestrian Games in Germany, also serves to meet this criterion. Counsel asserted that the participants for the 2008 Olympics will be selected from this squad. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner submitted a December 6, 2005 letter from [REDACTED] High Performance Manager for the Equestrian Federation of Australia (EFA), asserting that the petitioner had been selected for EFA’s National “Elite” or “Development” Squad. While [REDACTED] references a list of squad members, the list was not initially submitted although an article in the *Weekly Times* identifies the petitioner as a member of Australia’s overseas jumping squad. [REDACTED] Chef d’Equipe of the Australian Show Jumping Team, supports counsel’s assertion that the petitioner has represented Australia and appeared “on the short and long lists for several other National Team competitions including the Olympics.” Mr. Lamb further confirms that the petitioner “is among a small group of Australian riders from who[m] the participants for the 2006 World Equestrian Games Team will be selected.”

In response to the director’s request for more evidence regarding this criterion, counsel asserted that the petitioner’s membership in the USEF, which has 87,000 members, including 31,000 in the petitioner’s category, and UFA, which has 18,000 members, can serve to meet this criterion. The petitioner did not submit evidence, however, that either USEF or UFA requires outstanding achievements of its members.

In addition, counsel references a new letter from [REDACTED] and documentation about EFA’s elite teams and squads. [REDACTED] affirms that the petitioner represented Australia at an event in China in 1994. In addition, [REDACTED] asserts that the petitioner received a Certificate of Capability for the 2006 World

Equestrian Games, was in contention for a team position, but was unable to attend the final selection due to an injury to his horse. Finally, ██████████ asserts that the petitioner is “now working towards Olympic selection for the 2008 Beijing Games,” for which ██████████ assesses him to be “in strong contention.”

The list of squad members for July 2006 reveals that the petitioner was selected for the Development Squad. The petitioner is not listed as a member of either the development or elite squad for 2007 as of the July 3, 2007 Internet printout of those squad members submitted in response to the director’s request for additional evidence. The Internet materials submitted reflect that the “Development Squad” is “to identify and encourage up and coming horse and rider combinations that have achieved noteworthy performance.” The “Elite Squad,” on the other hand, “features horse and rider combinations that have been identified as leading combinations in contention for either World Championship or Olympic Selection.”

The evidence is not persuasive the membership on the Development Squad requires outstanding achievements rather than the potential for future achievements. While the petitioner has competed overseas representing Australia, the record is not persuasive that he was actually selected for membership on a defined national team that competes at the highest international competitions.

On appeal, the petitioner submits an August 9, 2007 unsigned letter addressed to “Dear Rider,” asserting that the addressee has been selected for the 2007 Elite Squad. A list of “August 2007” squad members, including the petitioner, is attached. While the previous lists submitted were published on the Internet, the list submitted on appeal is not from the Internet. Regardless, even if this evidence were persuasive, it postdates the filing of the petition and will not be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

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.

Initially, counsel asserted that the petition was supported by “50 articles and newsletters” about the petitioner. The petitioner submitted a photograph and caption featuring the petitioner in the local section of the *Orange County Register*, an article on the addition of the petitioner to the staff of the Oak Park Equestrian Center in the *Times Press Recorder* (“serving the South County”) and an article about Celtic Gold discussing the petitioner’s training of that horse in an unidentified publication. The petitioner also submitted listings of rankings that include the petitioner and numerous articles about various events in which the petitioner competed reporting his results in addition to the results of the other competitors, many of which appeared in the *Weekly Times*.

In response to the director's request for evidence that the petitioner has been featured in major media, counsel asserted that the *Times Press Recorder* is a Pulitzer winning California Central Coast newspaper covering San Luis Obispo County and the petitioner submitted an online version of the paper. Finally, the petitioner submitted new published material that postdates the filing of the petition, most of which is coverage of events at which the petitioner competed that mention him only in passing. One of the new submissions is an article about the petitioner in the June/July 2007 issue of Australia's *Equestrian Life*, but we note that the petition was filed in August 2006, nearly a year before this new article was published.

The director concluded that the published materials did not indicate that the petitioner enjoyed sustained national or international acclaim as a horse trainer at the time of filing, noting that the petitioner had not established that the published material had appeared in major media and that at least one of the articles was published after the date of filing. On appeal, counsel asserts that the director erred in requiring the published material to expressly characterize the petitioner as extraordinary, something not required by the regulation.

Counsel mischaracterizes the director's concerns. While the director did conclude that the published material does not indicate that the petitioner enjoys sustained national or international acclaim, his basis for that conclusion is that the materials did not appear in major media, a plain language requirement of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

We concur with the director. First, we note that published material about an event where the petitioner competed that mentions his results in addition to the results of the other competitors is not primarily *about the petitioner*, as required by the plain language at 8 C.F.R. § 204.5(h)(3)(iii). We acknowledge that the record contains three articles that could be considered "about" the petitioner, one of which postdates the filing of the petition. As discussed above, the petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Therefore, we will not consider evidence relating to the criteria that postdates the filing of the petition.

We concur with the director that the *Times Press Recorder* is not major media, but a local California newspaper. While we acknowledge that the newspaper maintains a website that can be accessed worldwide, we are not persuaded that every local or community newspaper with a website renders that newspaper major media. The record contains no evidence that the newspaper's website is routinely accessed by those outside California or that the paper has any significant distribution beyond that state. The petitioner has not explained how coverage in this local paper has garnered him national or international acclaim or is otherwise consistent with such acclaim.

Finally, the "article" about Celtic Gold bears no indicia of publication by a major media publication or, in fact, any other publication.

In light of the above, the petitioner has not established that he met this criterion as of the date of filing.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Initially, counsel relied on the same evidence that was submitted to meet the membership criterion to also meet this criterion. The statute requires the submission of extensive documentation. Section 203(b)(1)(A)(i) of the Act. The regulation at 8 C.F.R. § 204.5(h)(3) requires the submission of evidence sufficient to meet at least three of the regulatory criteria. While we do not preclude the possibility that evidence directly relating to one criterion may also be relevant to a second criterion, we examine such claims carefully.

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the relevant factors are the nature of the roles the petitioner was selected to fill and the reputation of the entities that selected him. While a role within an association of which the petitioner is a member may be relevant to this criterion, the very fact of membership, in and of itself, is insufficient. Rather, the petitioner must demonstrate that he was selected for a leading or critical role within that association beyond the minimum membership role every member performs. In this matter, the petitioner has not demonstrated that he was selected for a specific role within USEF, EFA or EFA's Development Squad, such as but not limited to a director, officer or team captain position.

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

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies on his participation, sometimes successful, in the Grand Prix and other show jumping events that earn World Cup points towards his overall ranking. His highest national ranking as of the date of filing was 69th. The biographies submitted on appeal include those of show jumpers who have won world and European championships, competed successfully at World Cup qualifier shows, represented their countries at the Olympics and been honored with an American Grandprix Association Rider of the Year title. Thus, it appears that the highest level of the petitioner's field is far above the level he had attained, especially as of the date of filing in this matter.

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 himself as a Head Horse Trainer 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 indicates that the petitioner shows talent as a jumper and, to a lesser degree, as a trainer of other riders, but is not persuasive that the petitioner's achievements set him significantly above almost all others in

his 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.