

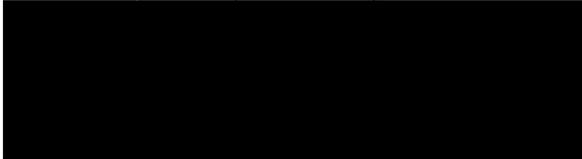


D8

U.S. Department of Justice  
Immigration and Naturalization Service

NOTHING BUT GET OFFER TO  
PROVIDE CLEARLY UNWARRANTED  
EVIDENCE OF PERSONAL QUALITY

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

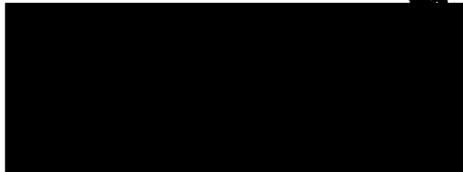


File: WAC-01-252-53826 Office: California Service Center Date: 13 MAY 2002

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is a bicycle retailer. The beneficiary is a professional fitness trainer and amateur athlete competing in triathlon events. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics, in order to employ her in the United States for a period of three years at a salary of \$40,000 per year. The petitioner seeks to employ the beneficiary to train and compete in athletic events and to attempt to qualify for a women's Olympic triathlon team. The beneficiary would also be involved in promoting products of her sponsoring athletic equipment companies.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability in athletics which requires sustained national or international acclaim and recognition as being at the very top of the field of endeavor.

On appeal, counsel for the petitioner submitted a written brief arguing, in part, that the director applied an incorrect regulatory standard and that the beneficiary does qualify for O-1 classification based on her athletic achievements.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue raised by the director in this proceeding is whether the beneficiary qualifies for classification as an alien who has extraordinary ability in athletics.

8 C.F.R. 214.2(o)(2)(ii) states that petitions for O aliens shall be accompanied by the following:

(A) The evidence specified in the particular section for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

*Extraordinary ability in the field of science, education, business, or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) 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;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is a native and citizen of South Africa. She is a professional fitness trainer and competes in amateur athletic events, including triathalons. The petitioner submitted documentation showing that the beneficiary holds three world records in stationary cycling (spinning) and has been entered into the Guinness Book of World Records for those achievements. Documentation was also submitted that the beneficiary has achieved a degree of national recognition in the media in South Africa regarding her athletic achievements. Evidence was also submitted showing that the beneficiary is sponsored by a major athletic apparel/equipment manufacturers, Nike.

A determination of "extraordinary ability" for the purpose of this type of visa petition proceeding necessarily involves a degree of subjectivity. In making a determination, the Service must rely on the weight of the evidence as a whole and the sufficiency of the evidence in relation to the regulatory requirements.

In reaching his decision, the center director found that the evidence submitted did not establish that the beneficiary satisfied at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

On appeal, counsel argued, in part, that the director applied an incorrect standard and asserted that, "This is NOT the I-140 application which requires sustained 'national OR international acclaim.'" "

The argument that the director applied an incorrect standard is not persuasive. The statutory language of the O-1 extraordinary ability classification, in fact, requires that extraordinary ability be demonstrated by "sustained national or international acclaim." Section 101(a)(15)(O)(i) of the Act.

On review, holding three world records in spinning is clearly an impressive achievement. However, achievements recognized by the Guinness Book of World Records is not a forum exclusive to athletics and is not sufficient to satisfy the requirement at 8 C.F.R. 214.2(o)(3)(iii)(A) in demonstrating extraordinary ability.

The fact that the beneficiary is sponsored by a prestigious athletic equipment company such as Nike is also an impressive achievement, but is not sufficient to establish the level of recognition required for O-1 classification.

The beneficiary has achieved national media recognition in her native South Africa, particularly in relation to her breaking the spinning records. However, the record does not show that this recognition has been sustained over her athletic career. The record does not show that the beneficiary has been a member of a national team such as an Olympic team, has won any major international athletic events, or has received significant recognition by major sports media. The record does not show that she has satisfied at least three of the requirements at 8 C.F.R. 214.2(o)(3)(iii)(B).

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for this classification, the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." Section 101(a)(15)(O)(i) of the Act. The record does not demonstrate that the beneficiary's achievements have been so recognized as of the date the petition was filed.

8 C.F.R. 214.2(o)(3)(ii) further requires that a petitioner establish that the alien athlete is one of a small percentage "at the very top" of the field of endeavor. The evidence is insufficient to demonstrate that the beneficiary is considered one of the few at the very top in athletics in general or in triathlon competition specifically. Accordingly, it is concluded that the petitioner has failed to overcome the director's concerns.

The denial of this petition is without prejudice to the filing of a new petition under alternate provisions of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.