



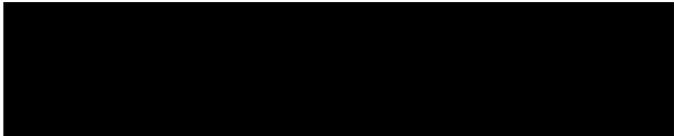
D8

U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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File: LIN 02 253 51777

Office: NEBRASKA SERVICE CENTER

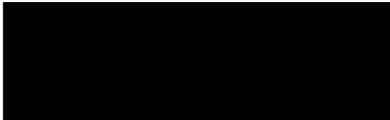
Date: **NOV 13 2002**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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, Director
Administrative Appeals Office

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

The petitioner is the U.S. national governing body for the sport of speed skating. The petitioner receives funding from the U.S. Olympic Committee to train athletes who are or will be in contention for the National and Olympic teams. The beneficiary is an accomplished speed skater who has competed internationally since 1989. 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 temporarily employ her in the United States as a regional speed skating development coach for three years at a salary of \$26,000 per year.

The director denied the petition finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in athletics.

On appeal, counsel for the petitioner submitted a brief and additional documentation.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the 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.

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 petitioner submitted the following documentation with the I-129 petition: a letter from the petitioner regarding the nature of the work to be done and the beneficiary's qualifications; a copy of a written contract between the petitioner and the beneficiary; the beneficiary's resume; copies of the beneficiary's coaching licenses; her career statistics; evidence of her awards and certificates; and news articles about the beneficiary and her work.

The petitioner also furnished a consultation from a senior staff member at U.S. Speedskating, stating that they support the petition for the beneficiary as an alien of extraordinary ability.

The director found that although the beneficiary is an accomplished speed skater, the petitioner failed to demonstrate that the beneficiary has sustained national or international acclaim and recognition for achievements as a coach.

On appeal, counsel asserts that the director too narrowly defined the "area of extraordinary ability" within which the beneficiary will work.

Counsel's argument is persuasive. The Act requires that the alien demonstrate extraordinary ability *in athletics* by sustained national or international acclaim and seeks to enter "the United States to continue work *in the area of extraordinary ability.*" See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. 1101(a)(15)(O)(i). The statute speaks in general terms. It does not demand that the alien's extraordinary ability be narrowed to a specific position, e.g., quarterback, or a specific type of competition, e.g., 1000 meters. The beneficiary's area of extraordinary ability is not limited to speed skating competition but rather is within the general field of speed skating.

There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). However, the record is persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

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

In April 2002, the beneficiary received the national prize "Award of the Golden Pin" in recognition of her athletic achievements. She won first place in the German Sprint Championship in 2002 and in the German Sprint Junior Championship in 1993.

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 field.

The beneficiary was a member of the German National Speedskating

Team from 1996 to 2001, and a member of the 2002 German Olympic Team at the Winter Olympics in Salt Lake City, Utah. Both teams require outstanding achievements of their members.

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.

The petitioner submitted several published materials relating to the beneficiary's athletic performance. The material publicized the beneficiary's awards ("Golden Pin"), and her participation in the 2002 Winter Olympics.

The petitioner met the requirement of providing a consultation from a person with expertise in the field.

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 met that burden.

ORDER: The appeal is sustained.