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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 MASS., 3/F
Washington, D.C. 20536

[redacted]

FILE: LIN 02 261 52443 Office: NEBRASKA SERVICE CENTER Date: APR 10 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, the [redacted] is the National Governing Body of the [redacted] and is the official organization for sport skiing in the United States. The [redacted] is a part of the [redacted] The beneficiary is a former ski competitor and a former alpine ski coach. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to employ him in the United States as an alpine ski coach[1] for the United States national ski team for a period of three years at an annual salary of $44,000.

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 submits a statement and asserts that the beneficiary is an alien of extraordinary ability in the field of alpine ski coaching. Counsel also asserts that the criteria outlined under 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B) do not readily apply to alpine ski coaches.

Section 101(a)(15)(O)(i) of 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:

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[1] The petitioner indicated that it intended to hire the beneficiary as a Men's World Cup Coach on the Form I-129.

(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 in this matter is a native and citizen of Canada. The record shows that the beneficiary was a head coach of the Canadian men's national ski team until his employment was terminated in 2002. In the years 1984-89, he was a member of the Canadian National Alpine Ski Team. In 1984, he was a member of the Canadian Olympic Team. He competed as a member of the Japanese and U.S. Pro Ski Tours from 1991 to 1993.

The director noted that the petitioner relied solely on testimonials to establish the beneficiary's eligibility and that the evidence was insufficient to demonstrate that the beneficiary is among that small percentage who have risen to the very top of their field.

On appeal, counsel asserts that the criteria set out in 8 C.F.R. § 214.2(o)(iii)(B) are inapplicable to a ski team coach except that the beneficiary satisfies criterion number seven.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability as a ski coach.

First, 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). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner submitted a letter written by the United States Ski Coaches Association Assistant Director that mentions that the beneficiary was twice named the Canadian Alpine Ski Team Coach of the Year. In the absence of corroborating evidence and information about the significance of the award, the petitioner failed to establish that the beneficiary satisfies criterion number one. The petitioner provided the Bureau with a letter written by Edi Podivinsky that states that under the beneficiary's guidance, Mr. Podivinsky achieved a high level of success including winning an Olympic medal. In the absence of corroborating evidence of Mr. Podivinsky's success and tutelage by the beneficiary, this letter is insufficient evidence that the beneficiary satisfies this criterion.

No evidence was submitted in relation to criterion number two. The petitioner asserts that this criterion does not readily apply to the beneficiary's occupation. The AAO concurs.

No evidence was submitted in relation to criterion number three; however, an Internet search uncovered evidence of published material in major media about the alien relating to the alien's work in his field of endeavor. The published material indicates that the Canadian Alpine Ski Team chose to not renew the beneficiary's contract as it was disappointed with the team's performance over the past two seasons.[2] The evidence on the record does not satisfy this criterion.

No evidence was provided in relation to criteria numbers four, five, and six.

For criterion number seven, counsel for the petitioner asserts that the beneficiary satisfies this criterion because in the proffered position, the beneficiary would serve in a critical capacity (as a coach) for an organization with a distinguished reputation (the [redacted] The criterion requires evidence that the beneficiary has already served in such a capacity. According to the record, the beneficiary served first as an assistant coach then as a head coach of the technical team and as head speed coach of downhill and super slalom racers on the Canadian Alpine Ski Team. The evidence is insufficient to establish that the beneficiary satisfies this criterion. The petitioner failed to state whether the beneficiary was the sole head coach or one of a number of head coaches. The petitioner failed to provide corroborating evidence in the form of news articles to demonstrate that the beneficiary has sustained acclaim by serving in a critical capacity for the Canadian Ski Team. Although the beneficiary states on his resume that he served as the head discipline coach for the Olympic Winter Games and the World Alpine Ski Championship on four occasions, the petitioner provided insufficient corroborating evidence to establish these facts or to describe their significance.

No evidence was provided in relation to criterion number eight.

Counsel for the petitioner asserts that the criteria at 8 C.F.R. § 214.2(o)(iii)(B) do not readily apply, and as comparable evidence submits a letter from the United States Olympic Committee indicating that it selected the beneficiary to serve as a coach based on his extraordinary ability in the field of athletics. While this evidence would bolster other evidence of extraordinary ability, the record contains no firsthand evidence of athletic or coaching achievements by the beneficiary or by athletes he has coached. This evidence is insufficient, without more, to establish eligibility for this restrictive visa classification, which requires extensive documentation of extraordinary achievement.

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.

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[2] "Racing News: ACA Terminates Men's Speed Team Program for 2002 Season," February 17, 2002 at http://www.canski.org/e/html/news and "Canadian Ski Team Opts Not to Keep Men's Team Speed Coaches," February 17, 2002, at http://www.canoe.ca/2002/gamesAlpineSkiingArchive.

ORDER: The appeal is dismissed.