

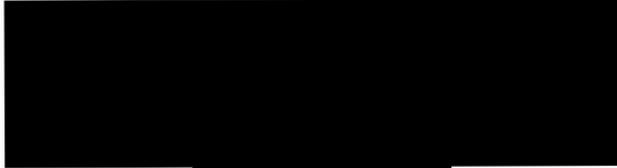


U.S. Citizenship
and Immigration
Services

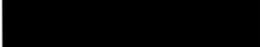
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B2



FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUN 29 2006

LIN 04 015 50032

IN RE:

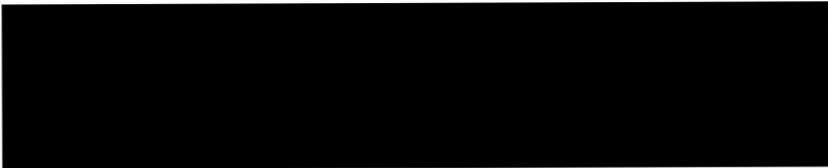
Petitioner:

Beneficiary:



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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director reopened the matter on the petitioner's motion, and denied the petition again. The matter is now before the Administrative Appeals Office 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.

On motion, counsel states that the petitioner "has met the requirements of a recognized national and international sports figure. Extensive documentation evidencing extraordinary ability has been submitted."

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 to the United States will substantially benefit prospectively the United States.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on October 20, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a runner.

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. 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.

On motion, the director concluded that “the petitioner has received lesser nationally or internationally recognized prizes or awards.” For example, in the 1997 Francophone Games the petitioner won the gold medal in the 5000 meters.¹ Published race results and letters of support from expert witnesses confirm the petitioner’s receipt of prize medals at other national and international competitions. We concur with the director’s finding that the petitioner meets this criterion.

Published materials 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.

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 or international level from a local publication or from a publication in a language that most of the population cannot comprehend. 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.²

The petitioner submitted articles appearing in publications such as [REDACTED] and [REDACTED]. These articles briefly mention the petitioner as placing among the top finishers in a particular race event but they are not primarily about the petitioner. Further, there is no evidence showing that any of the publications submitted by the petitioner had significant national or international readership.

On motion, the petitioner submitted additional articles appearing in *Michigan Runner* and *The News-Register* of Wheeling, West Virginia in 2004 and 2005. These local articles came into existence 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 (Comm. 1971).

We find that the predominantly local articles submitted by the petitioner are not adequate to demonstrate that she has earned sustained national or international acclaim. The petitioner has not established that she meets this criterion.

¹ Informational material submitted by the petitioner indicates that the Francophone Games “is a multi-sport and cultural event for French speaking nations.”

² 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, cannot serve to spread an individual’s reputation outside of that county.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Beyond the regulatory criteria, the petitioner submitted several "letters of recommendation."

[REDACTED], Elite Athletic Coordinator for race events such as the Steamboat Classic 4 Mile Race in Peoria, Illinois, and the U.S. 10K Classic in Atlanta, Georgia, states:

I have known [the petitioner] and [her spouse] since August of 2003, and I am thoroughly familiar with their running achievements. They both raced in one of the events for which I coordinate the elite field of runners – The U.S. 10K Classic, in Atlanta, Georgia in September 2003, 2004 and again in 2005. They have both won numerous track and road races in the United States and have raced all over Europe as well as the U.S.A.

[The petitioner] was the European Junior Champion at 3000m and World University Cross Country Champion in Spain 2002. She took part in 8 IAAF [International Association of Athletics Federations] World Cross Country Championships. . . . In the U.S.A. [the petitioner] has won more than fifty of the seventy races she has entered in the past two years.

[REDACTED] Retired U.S. Team Olympic Coach for Women's Gymnastics, who identifies himself as "a personal friend" of the petitioner's former running coach in Romania, states:

[The petitioner] has obtained two bronze medals at the European Junior Championships, a bronze medal at the 3000 meters European Championship in 1993 in San Sebastian, Spain and the gold medal at the 3000 meters European Championship in 1995 in Hungary. In 2002, [the petitioner] achieved the title of track and field University World Champion at the 2000 meters.

Additional letters of recommendation repeat the preceding observations and discuss the petitioner's competitive results at various other local, national, and international races. While the letters of support submitted by the petitioner help to show that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(i), they fail to demonstrate the petitioner's eligibility under any of the remaining regulatory criteria. The regulation at 8 C.F.R. § 204.5(h)(3), however, requires documentation meeting at least three of the ten criteria. The commentary for the proposed regulations implementing section 203(b)(1)(A) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The criteria require specific documentation beyond mere testimony, such as awards, published material about the alien, and evidence of a high salary. While letters of recommendation may place the evidence for the regulatory criteria in context, they cannot serve as primary evidence of the specific achievements required by the regulatory criteria. Further, while the regulation at 8 C.F.R. § 204.5(h)(4) permits "comparable evidence" where the ten criteria do not "readily apply" to the alien's occupation, the regulation

neither states nor implies that letters of recommendation attesting to the alien's standing in the field are "comparable" to the strict documentation requirements in the regulations setting forth the ten criteria.³

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.

³ In the present case, there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation.