U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 08 2007
WAC 06 127 52482

IN RE: Petitioner: [redacted]
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:

[redacted]

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 sustained and the petition will be approved.

The petitioner seeks classification as an "alien of extraordinary ability" 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 requisite sustained national or international acclaim. More specifically, the director found that the petitioner meets only one of the regulatory criteria, of which an alien must meet at least three.

On appeal, counsel submits a brief. While not all of counsel's assertions are persuasive and some of the director's concerns are valid, we find that the evidence satisfactorily meets an additional two criteria, especially in light of the remaining evidence that, while not persuasive by itself, is at least consistent with a finding of sustained acclaim.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

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 (November 29, 1991). The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an equestrian show jumper – trainer and rider. While the evidence suggests that the petitioner may have once enjoyed acclaim as a rider and that he continues to compete as a rider, the record also suggests that the petitioner is currently more successful as a trainer.

At the outset, we must address counsel's assertions relating to the required evidence in this matter. Counsel relies on a non-precedent decision by this office for the proposition that a petitioner may rely on letters from other professionals as evidence of awards. Only decisions designated as precedents are binding in future matters. 8 C.F.R. § 103.3(c). A non-precedent decision does not necessarily discuss all evidence submitted. While the non-precedent decision submitted by counsel does not explicitly indicate that copies of awards were submitted, it also does not state that such evidence was not included or state that such evidence is not required to establish the receipt of awards. Regardless, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It remains, the regulation at 8 C.F.R. § 103.2(b)(2) requires the submission of primary evidence unless it is established to be unavailable or nonexistent. Only where secondary evidence is also established to be unavailable or nonexistent may the petitioner rely on affidavits alone.

In addition, it is also worthwhile to discuss the concept of *sustained* 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.

A rider and a trainer certainly share knowledge of show jumping. While many trainers may continue to compete, the two activities rely on very different sets of basic skills. Viewing competitive athletics and coaching or training as separate areas of expertise has been upheld in Federal Court. *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002).

Nevertheless, this office has recognized that there exists a nexus between competing and coaching or training. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is sometimes appropriate. In a case where an alien has clearly achieved national or international acclaim as a competitor and has

sustained that acclaim as a trainer at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that training is within the petitioner's area of expertise. In this matter, the petitioner has worked as a trainer for many years and has ample opportunity to earn acclaim in that occupation. Thus, the petitioner must demonstrate that he meets three criteria as a trainer. That said, in this matter, the petitioner's demonstrated track record of success as a competitor bears mention as it is certainly consistent with his current acclaim in the field generally.

Rather than simply relying on the affidavits of members of his field as evidence of his riding awards, the petitioner submitted objective documentation of his national awards, including copies of awards and news reports. The book, "Riding Forward," profiles the New Zealand Horse Society and contains several references to the petitioner. The book also lists the winners of the New Zealand Olympic Cup, which the petitioner won in 1982 and 1980 and the Merrylegs Cup, which the petitioner won in 1989 and 1990. Newspaper articles confirm the petitioner's participation in the 1988 Olympics in behalf of New Zealand. [redacted], Chairman of Selectors, Show Jumping New Zealand, asserts that the petitioner "was ranked in the World Cup standings through 1995, spending six of those years in the top five riders." The petitioner also submitted an F.E.I./Samsung International Competition ribbon from 1993. Finally, the petitioner submits his results for the Volvo World Cup, including a second place finish in 1983 and 1986. In 1995, the final year he competed in this competition, the petitioner finished second in the preliminary competition. Thus, while these awards are not evidence of sustained acclaim in 2006, when the petition was filed, it is a notable record, consistent with his continued notoriety in the field generally after establishing himself as a trainer.

Moreover, while the record would have been bolstered by letters from nationally successful riders trained by the petitioner other than his wife and daughter, it remains that both the petitioner's wife and daughter have demonstrated impressive records and affirm being trained, at least at some point, by the petitioner. Moreover, [redacted], former Chair of the New Zealand Equestrian Federation Coaching Committee, asserts that the petitioner coached Olympians [redacted] and [redacted] during the 1990's. Similarly, Larry Langer, President and CEO of Langer Equestrian Group and Co-Chairman of the United States Equestrian Federation (USEF), the national governing body of equestrian sport in the United States, asserts that the petitioner "is already training a group of young riders here, three of whom will compete to represent our region at the National Championships."

In addition, the press coverage submitted consists mostly of press releases, articles in regional publications or articles that mention the petitioner only in passing. The press coverage in national publications is much older than the local and regional coverage. Nevertheless, while insufficient on its own, we note that the petitioner has been consistently covered to some degree.

Further, the record contains a letter from [redacted] affirming that the petitioner participated in the New Zealand Equestrian Federation Coaching Committee, wrote the 1,000 page training course, "which is

still used today and is the course book used at the polytechnic colleges." This undertaking took four years. The petitioner then taught the course from 1995 through 2001. The petitioner submitted a 1996 Coaching Certificate for [redacted] naming the petitioner as a course director. Once again, this letter would have carried more weight had the petitioner submitted copies of the title pages of textbooks or other course materials crediting the petitioner as the author. Moreover, the record suggests that the top New Zealand riders do not train in New Zealand. Nevertheless, we mention this letter as additional evidence consistent with the petitioner's continued notoriety after his last major riding award.

Finally, we emphasize that 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. Citizenship and Immigration Services (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 795-796. 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)). Ultimately, 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.

Nevertheless, it bears mention that several members of the show jumping industry with the highest credentials have written in support of the petition. Most notably, [redacted] asserts that the petitioner is "New Zealand's most preeminent show jumping equestrian" and "a leader in the horse industry and an extraordinary international competitor." [redacted] is an author of books in the field, a gold medalist, the coach of the U.S. 1996 and 2000 equestrian teams, director of the U.S. Equestrian Team and American Horse Show Association and Vice President of the American Grand Prix Association. [redacted] is also featured as a "legend" on the cover of *Practical Horseman*.

a board member of U.S.A. Equestrian and Olympic Course Designer, asserts that the petitioner is New Zealand's most highly regarded show jumping rider and trainer. She further asserts that he has managed New Zealand's leading jumping competitions and that he "trains international level horses and coaches top jumper riders, including young up and coming riders as well as top international level Grand Prix riders."

[redacted] an Olympic medalist in equestrian sports and Director of the New Zealand Olympic Academy, notes that not only has the petitioner achieved great riding achievements, he has done so on a number of horses, the majority of whom he produced himself. She further asserts that the petitioner's "contribution to the coaching system has been a major factor in the increasing success of New Zealand

riders on the international scene today." She concludes that the petitioner's accomplishments both as a rider and trainer are well known internationally.

All of the above evidence, while insufficient had the petitioner not demonstrated that he meets the regulatory requirements as a trainer, is highly consistent with a finding that the petitioner has enjoyed a career of acclaimed work in the field of show jumping.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria. As stated above, the director acknowledged that the petitioner's role as organizer of prominent horse festivals was a leading or critical role for an entity for a distinguished entity pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Thus, the petitioner need only demonstrate that he meets an additional two criteria.

> *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.*

The petitioner submitted his credential as a Grade IV Show Jumping International Expert issued by the New Zealand Equestrian Federation in December 2000. By itself, the handwritten notations on this document would be insufficient. The petitioner, however, submitted additional evidence to confirm the information on the document and its significance. Ainslee Souness, the Coach Development Manager for Equestrian Sports New Zealand, confirms previously and again on appeal that the petitioner was issued a Grade IV credential. [redacted] of Equestrian Sports New Zealand, asserts that a Level Four Coaching Passport is only awarded to those nominated and approved by the national coaching committee who meet the following standards:

- Have represented their national federation at international level, Olympics or other internationally recognized competitions.
- Coached to international grand prix level.
- Been involved in administration at national/international level.
- Administrated at an event nationally or internationally recognized.

[redacted] asserts that the petitioner is one of "very few New Zealand equestrians, and certainly the only show jumper with his ability and reputation, to have qualified for the Level 4 international credential (an international system in which the U.S. does not participate)." The director failed to consider this evidence under this criterion.

While a coaching credential may not be a membership in an association, it would seem that this criterion is not applicable to the petitioner's field. Thus, we can consider comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). We are persuaded that nomination

for and receipt of this coaching credential is comparable to an exclusive membership. Thus, the petitioner has established that the petitioner meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The evidence submitted to meet this criterion is the strongest and most recent. Initially [redacted] Chairman of the Board of Directors for the New Zealand Equestrian Federation, asserts that he asked the petitioner "to evaluate New Zealand equestrian riding in the U.S." He concludes that the petitioner's input will be invaluable in selecting the team for the 2008 Olympics. This letter does not clearly explain the petitioner's official role.

In response to the director's request for additional evidence, the petitioner submitted the letter from [redacted], who asserts that the petitioner "was chosen by the New Zealand Olympic Selection Committee to be the only North American selector for riders to represent New Zealand in international competitions, most especially the 2008 Olympic Games." [redacted] Chairman of selectors, asserts that the petitioner became a member of the High Performance Selection Panel "when he moved to the U.S." Significantly, [redacted] asserts that the petitioner participates in the selection discussions and "has a vote in the outcome." [redacted] notes that the committee also seeks the petitioner's advice in such matters as proposed calendars for training and events.

The director concluded that the evidence of the petitioner's duties for the Selection Panel related to duties after the date of filing. While the specific examples of the types of duties the petitioner performs for the committee postdate the filing of the petition, the petitioner has served on this committee since entering the United States. We are satisfied that the petitioner has established that he met this criterion as of the date of filing.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel and some claims are not well supported by objective evidence, we are satisfied that the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.