U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 23 2009

SRC 08 102 53931

IN RE: Petitioner:
Beneficiary: [redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 that the record did not establish that the petitioner had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. The director also found the petitioner had not established that he is one of that small percentage who have risen to the very top of his field of endeavor.

Section 203(b) of the Act states, in pertinent part:

> (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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-99 (Nov. 29, 1991). 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 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 he has sustained national or international acclaim at the very top level.

This petition, filed on February 7, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a marathon runner. Initially and on appeal, the petitioner submitted pictures of trophies, medals, and him competing; certificates of participation in various contests; results of races run; and news articles.

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, internationally recognized award). Barring the alien's receipt of a such an award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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). We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

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

The petitioner submitted evidence of the following awards specifically containing his name: one gold and one silver medal from the 2007 World Police games, second place in the 2007 SAA Cross Country race, fourth place in the 2007 New Balance Real Run, first place in the Dharan Festival Marathon Competition 2061, first place in the 2007 Olympic Distance Categories, first place in the 37th PSA Cross Country race, Open Relay at the OSIM, first place in the 2007 Singapore Asian Triathlon Championships, sixth place in the 21st Mt. Kinabalu International Climbathon, fifth place at the 2006 JP Morgan Chase Corporate Challenge, and first place at the 2007 JP Morgan Chase Corporate Challenge. The petitioner also submitted photographs of the following awards given with no indication as to the recipient of the award: first place in the 2007 Tan Soo Liat Memorial road relay race, silver medal at the 2007 Aviva Ironman Triathlon, first place 2007 Sarangoon Road Run, first place in the 2007 Gurkha Contingent cross country marathon, first place in the 2006 Gurkha Contingent Inter-Coy Track and Field Championships, a medal for the 2006 Standard Chartered Singapore Marathon, fourth place in the 2005 Alive West Coast Road Race, gold medal at the 2005 Singapore Amateur Athletic Association race, first place in the 2005 Mazuno AVC Singapore Run, a silver medal for the 2005 Sheares Bridge Run and Army Half Marathon, second place at the 2005 SAFRA Sheares Bridge Run and Army Half Marathon, first place in the 2005 Prisons Sports and Recreation Club Annual Cross-Country Championship, first place in the 2005 Gurkha Contingent IPPT Test, silver medal in the 2004 Sheares Bridge Run & Army Half Marathon, a medal for the 2004 Singapore Marathon, and first place in the 2004 Mizuno Wave Run. Without documentary evidence to establish that the petitioner was the actual recipient of the awards shown in the photographs, these photographs, by themselves, are not sufficient to establish the petitioner's eligibility for this criterion.

As it relates to both the documented awards and undocumented awards, information about the significance and national or international recognition of the competitions is notably absent. The petitioner submits no information about the contests, including how the contests were nationally or internationally recognized in the field of marathon running. The petitioner did not submit evidence such as the number of participants in any event, the standing or recognition of the other participants in the events, or any other indication that winning any of these prizes or awards confers national or international recognition for excellence in marathon running. In addition, some of the awards, as noted above, contain no indication that they were even awarded to the petitioner.

The petitioner also submitted certificates of participation for the 2004 Singapore-Johor 2nd Link Bridge Run, 2005 Standard Chartered Singapore Marathon, 2006 Singapore-Johor 2nd Link Bridge Run, 2007 TM 21st Mt, Kinabalu International Climbathon, 2005 SAFRA Sheares Bridge Run & Army Half Marathon, and 2004

Mizuno Wave Run. Certificates of participation by themselves are generally insufficient under this criterion as mere participation in an event does not constitute a prize or award, much less national or international recognition.

The petitioner also submitted evidence that he won first place in the 2008 JP Morgan Chase Corporate Challenge and sixth place in the 2008 Mt. Kinabalu International Climbathon, however, these races were run after this petition had been filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). As a result, these awards will not be considered in this proceeding.

On appeal, although the petitioner stated that "[he] is very close to the world record" and that he set records in some of the runs in which he participated, he submitted no evidence to support his statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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).

On appeal, counsel also lists a number of other awards purportedly won by the petitioner, however, the record does not support counsel's assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). Even if evidence of these additional awards did appear in the record, our analysis would not change as the petitioner failed to submit information about these contests which demonstrates that winning any of these prizes or awards confers national or international recognition for excellence in marathon running.

In light of the above, the petitioner has not established that he meets this criterion.

> *(ii) 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.*

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Although not considered by the director in his decision, we note that the petitioner claimed to have met this criterion by virtue of his membership in the Nepali National Sports Council and the New York Road Runners. However, the petitioner submitted no evidence regarding the membership criteria for these organizations and made no claim that either association requires outstanding achievement for membership. In addition, no evidence appears in the record to indicate that membership applications are judged by national or internationally recognized experts in the field. Lastly, the letter submitted from the New York Road

Runners indicates that the petitioner did not become a member of that organization until May 8, 2008, which was after the date that this petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. at 49.

For all of the above reasons, the petitioner has not established that he meets this criterion.

(iii) Published material 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 general, 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 level from a local publication. 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.[1]

Counsel claims eligibility for the petitioner by virtue of the publication of the petitioner's picture in various publications. As this criterion specifically requires an author, title, and translation, the publication of photographs do not qualify the petitioner under this criterion. Those specific requirements reference published written work instead of visual work. As such, these published photographs do not qualify the petitioner under this criterion.

In addition, the petitioner submitted an article entitled, "Magar bagged First position breaking old record," which appeared in *National Daily Newspaper Blast Times* on January 16, 2005. The accompanying translation for this article indicates that it is only a partial translation of the article. The regulation at 8 C.F.R. § 103.2(b)(3) requires that a full translation of the article be submitted. Without the full translation, we are unable to determine that this article is relevant to this criterion. The petitioner also submitted a blurb that appeared in the October 2007 issue of *Life;* a congratulatory announcement that appeared in *The New Paper* on August 2, 2007; and the article "JP Morgan Chase Corporate Challenge" published in the October 2007 *Samachar Sangalo*. However, these articles were not primarily about the petitioner as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). For example, the submission from *The New Paper* contained the unidentified photographs of forty different individuals and congratulated "all 8,162 runners who have completed the race."

Even if the petitioner had demonstrated that any of these articles were about him as required by the regulation, the record is devoid of documentation such as the national or international circulation of any of the newspapers that printed the submitted articles or any other evidence which shows that the newspapers are professional, major trade publications, or other major media publications.

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[1] 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, for instance, cannot serve to spread an individual's reputation outside of that county.

On appeal, counsel states that the petitioner meets this criterion by virtue of the publication of race results which included his name on several websites such as the JP Morgan Chase website and the Singapore Police Force website. The petitioner submitted no evidence verifying that either of these websites amounts to major media. The Internet is an arena available to any user with access to a computer regardless of notoriety or recognition in the arts. To ignore this reality would be to render the "major media" requirement in the regulation at 8 C.F.R. § 204.5(h)(3)(iii) meaningless. We are not persuaded that international accessibility on the Internet by itself is a realistic indicator of whether a given website constitutes "major media" published material. In addition, a list of results that include the petitioner does not amount to published material about him as opposed to material about the race results. Counsel also claims that the petitioner's inclusion in the Routine Orders of Gurkha Contingent qualifies him under this criterion. No evidence appears in the record to indicate that this publication was anything other than an in-house newsletter for use by the police force instead of major media.

In light of the above, the petitioner has not established that he meets this criterion.

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel, on appeal, claims that the petitioner meets this criterion because "[the petitioner] is considered as a significant and honorable Marathon runner because of his successful and outstanding achievement in his career. He has received numerous appreciations, regards and honors." The awards, "appreciations" and "honors" received by the petitioner were previously addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for prizes, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Nevertheless, the petitioner submitted no evidence showing that he made any contribution to the overall field of marathon running. The letters submitted stating that the petitioner is a successful runner do not change or otherwise impact this analysis since they do not indicate, for instance, that the has developed original training techniques or practices that have been recognized, widely adopted, or otherwise significantly impacted or influenced his field in a manner consistent with sustained national or international acclaim.

As such, the petitioner has not demonstrated eligibility under this criterion.

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In the original submission, counsel claimed that the petitioner met this criterion because of the number of pictures taken of him during the races. The plain language of this criterion reveals that it relates to the visual arts. The regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of "comparable" evidence only when the ten criteria found at 8 C.F.R. § 204.5(h)(3) do not "readily apply" to the petitioner's occupation. The record in this case shows that at least three of those criteria apply to the petitioner's occupation. The petitioner's performance and awards for marathons have been addressed under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(i) above. As virtually every athlete "displays" his or her work in the sense of competing in front of an audience, photographs of the petitioner which evidence his competition in races, do not meet this criterion.

Accordingly, the petitioner has failed to established that he meets this criterion.

The statute and regulations require that the petitioner seek to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. In counsel's original submission, she states that the petitioner has won many "Gold, Silver Cup and Gold, silver and Bronze medals in national and International tournament and World Championship [and the petitioner] wishes to continue work in the area of Marathon as a runner of US." On appeal, counsel simply quotes her previous submission. The petitioner himself provided no statement detailing how his past achievements relate to his plans for future employment nor any other statement about his prospective work in the United States. Although the alien may self-petition for an employment-based immigrant pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), the statute requires that the alien show that he will continue to work in his area of expertise in the United States. The petitioner here has failed to establish that he will pursue running marathons in the United States. Regardless, as discussed above, the petitioner does not meet any of the regulatory criteria as a marathon runner.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his field. The evidence in this case indicates that the petitioner has run in numerous marathon races but that his performance in these races did not convey national or international acclaim. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. This decision is rendered without prejudice to the filing of a new petition with the requisite supporting documents under section 203(b) of the Act, 8 U.S.C. § 1153(b).

ORDER: The appeal is dismissed.