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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 26 2009
SRC 08 065 52573

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 required for 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.

On appeal, counsel does not challenge any of the director's findings and instead asserts that the director erred in refusing to re-open the case and not reviewing the evidence submitted.

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.

United States 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 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 he has sustained national or international acclaim at the very top level.

This petition, filed on December 20, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a sprinter. Initially, the petitioner submitted letters of recommendation. A Request for Evidence ("RFE") dated February 28, 2008 appears in the record. The director's decision states that no evidence was submitted in response. On appeal, the petitioner submitted his sponsorship agreement, news articles, race results, and an

invitation to participate on the 2008 Great Britain Olympic Games team. Counsel also submits a United States Postal Service delivery slip indicating that he responded to the RFE. Counsel does not describe the documents purportedly submitted in response to the RFE. However, we have reviewed the entire record throughout the course of this proceeding on appeal.

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).

At no point in this proceeding, either before the director at the time of filing or in response to the RFE or on appeal to us, has counsel ever identified the specific regulatory criteria the petitioner purportedly meets. Further, on appeal, counsel fails to dispute any of the director's specific findings. Instead, on the Form I-290B, counsel simply states that the director "[a]ccepted material and refused to review material" or to re-open the case. As counsel has failed to specify which of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) the petitioner purportedly meets, we have considered the evidence submitted under the criteria we find to be most applicable. If it is counsel's contention that the petitioner meets a particular criterion not addressed in this decision, he has never provided such a statement or argument in this regard.

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

With his original submission, the petitioner submitted letters from [redacted], the United Kingdom Athletics High Performance Centre Director for West London; Emanuel Hudson, owner of HSInternational Sports Management; and [redacted], sports marketing manager for Nike. The letter from [redacted] referenced the petitioner's selection for the Great Britain Under 20 and Under 23 teams. This evidence of the petitioner's selection for the Great Britain youth teams does not constitute an award and is more relevant to the discussion of the criterion at 8 C.F.R. § 204.5(h)(3)(ii). Further, while all of these letters reference finishes or awards won by the petitioner, such as [redacted] stating that the petitioner ran "a personal best of 10.13 seconds" and [redacted] stating that the petitioner won first place in the 4x100 meter relay at the 1999 World Junior Championships and second place at the 2006 UK National Championships and European Championships Selections Trials, the record contains no primary evidence of the finishes or awards to support the claims made in the letters.

On appeal, the petitioner submitted secondary evidence in the form of race results found on the "Power of 10" website that he won third place in the Guadeloupe Grand Prix and second place in the 2006 AAA & NU European Trials. The petitioner submitted no primary evidence of any of these awards such as photographs of certificates or medals received. The petitioner submitted no information about either of these events except for the results so that we are unable to determine that participation or receiving an award at either event conveys

national or international acclaim. The petitioner also presented secondary evidence of his bronze medal in the 4x100 relay at the 2005 World University Games and gold medal in the 4x100 at the 2001 European Juniors. The petitioner presented no evidence to show either who was eligible for the competition or how, if the competition was restricted to students or athletes of a particular age, how the awards would constitute awards for excellence in the field if it did not allow those working in the field, i.e. professional sprinters, to participate. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[1] In any case, the petitioner submitted no evidence regarding the acclaim due to the receipt of any of these awards.

On appeal, the petitioner also submitted evidence that he advanced to the semifinals in the 100 meter race in the 2008 Olympic Games, won a gold medal in the 100 meter race at the 2008 European Cup, won fourth place in the 2008 Aviva National Championships, and won first place at the 2008 Geneva EAP meeting. However, these meets were held in 2008, which was after this petition was filed. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As such, these awards will not be considered in this proceeding.

Accordingly, the petitioner failed to demonstrate eligibility under 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 as an essential condition 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.

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[1] While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS's interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

The letter from [redacted] stated that the petitioner "has been a regular member of the GB Athletics Team for the past 7 years and continues to progress successfully from the junior to the senior level." [redacted] listed seven track meets in which the petitioner participated ranging from 2000-2007 with the first three meets dating from 2000 to 2003 being specifically identified as youth or junior events. The letter contained no indication as to when the petitioner transitioned from the junior level. While we acknowledge that national teams are usually limited in the number of members they select and have a rigorous selection process, not all "national teams," such as junior or youth teams which limit participants based on age, are as exclusive. Although [redacted] states that the petitioner represented Great Britain at the 2007 World Championships and [redacted] states that the petitioner "has been a member of Britain's last Olympic and World Championships team," the petitioner failed to establish his participation on his national team subsequent to his junior appearances or on an Olympic team prior to the 2008 team. 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. at 165. As stated above, USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899. While a petitioner's membership on his or her country's national team may serve to meet this criterion, the petitioner failed to establish such membership. As discussed, his membership from 2000 to 2005 was on a "junior level." His subsequent participation on the national team was not documented except for the 2008 team selections which occurred after the filing of this petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Finally, the petitioner submitted a letter dated July 14, 2008 inviting him to participate as part of the Great Britain delegation to the 2008 Olympic Games and news articles showing that he competed as a part of that team. The petitioner also submitted evidence of his participation on the Great Britain team at the 2008 European Cup, but presented no evidence as to when he was selected to be a part of that team. As a petitioner must establish eligibility at the time of filing, his selection to the 2008 Olympics and 2008 European Cup, which presumably did not occur until after the filing of the petition, does not establish his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

For all of the foregoing reasons, the petitioner failed to demonstrate eligibility under 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.*

The petitioner submitted no evidence related to this criterion at the time of filing. The articles submitted in response to the RFE and on appeal were published in 2008. As stated above, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner also submitted press releases generated by his agent about his accomplishments. These releases are not published material as contemplated by this criterion as they are advertisements generated for the petitioner as opposed to independent media coverage. In any case, the petitioner failed to show that such press releases or the 2008 articles appeared in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish eligibility under this criterion.

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

The petitioner submitted three letters, addressed above, which speak to the petitioner's race performances and sponsorship. These letters do not assert that the petitioner made an original contribution of major significance to his field as opposed to relaying past events. In addition, the letters are all from the petitioner's immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various competitions, they cannot by themselves establish the petitioner's acclaim beyond his immediate circle of colleagues. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a sprinter who has sustained national or international acclaim. Here, neither these letters nor any other evidence in the record suggest that the petitioner made an original contribution such as through original training methods, running techniques, or other aspects of sprinting. Without such evidence that the petitioner actually contributed to his field and that the field as whole then adopted or otherwise were impacted by these contributions, the petitioner cannot establish eligibility under this criterion.

Accordingly, the petitioner has failed to demonstrate eligibility under this criterion.

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The evidence of the petitioner's participation on the United Kingdom track and field team has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) and found to be lacking. We emphasize that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for membership in associations requiring outstanding achievement and original contributions of major significance in the field, 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. Even if the petitioner established his participation on the British national team, the evidence does not distinguish the petitioner from other members of the team such that his performance can be said to have been leading or critical. Simply being selected for this team is not sufficient to demonstrate eligibility under this criterion. The record contains no further evidence from the Great Britain athletic officials which identifies the petitioner's distinct performance for his team or a specific role, such as team captain, to differentiate the petitioner from his teammates in such a way that he can be considered to have performed in a leading or critical role for the British national team. In addition, although the petitioner submitted evidence that he performed on the Texas A&M University track team, he presented no evidence to show that his performance for that team was leading or critical or that the University's track team enjoys a distinguished reputation.

Finally, while the petitioner submitted a contract he signed with Nike European Operations, as that contract was entered into after this petition was filed, it cannot be considered. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of*

Katigbak, 14 I&N Dec. at 49. In any event, the petitioner submitted no evidence that he played a leading or critical role for Nike or that he performed differently than the hundreds of other athletes sponsored by Nike.

For all of the above reasons, the petitioner has not demonstrated eligibility under this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

As previously discussed, although the petitioner submitted evidence of his contract with Nike, that cannot be considered as it was entered into after filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Even if the contract could be considered as evidence under this criterion, it is not sufficient to demonstrate the petitioner's eligibility under this criterion. Further, the petitioner presented no evidence as to what other sprinters in the field currently earn so that we are unable to undertake a comparison and determine his remuneration in relation to others in the field. The petitioner submitted no evidence of his receipt of any other sort of salary or compensation from any other source to support his sprinting. While the contract from Nike amounts to evidence of a potential salary, the petitioner has not shown any actual pay for his sprinting from Nike or any other source.

For all of the above reasons, the petitioner has failed to establish his eligibility under this criterion.

Finally, beyond the decision of the director, we find the petitioner has failed to establish that his entry into the United States will substantially benefit prospectively the United States as required by the regulations. As discussed above, the petitioner has failed to establish his extraordinary ability as demonstrated by the required sustained acclaim and has also failed to establish through extensive documentation that his achievements have been recognized in his field. Given his failure to satisfy any of these statutory requirements, the petitioner's substantial benefit cannot be automatically assumed. The contract submitted from Nike indicates that the petitioner intends to compete at the UK National Outdoor Championships and in other events as a British citizen or sprinter. This evidence does not show how he will substantially benefit prospectively the United States as he trains for and competes with a foreign national team, i.e. the British National team. For this additional reason, the petition may not be approved.

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 had success as a sprinter. However, the record does not establish that the petitioner achieved sustained national or international acclaim so as to place him at the very top of his field. 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 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).

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.