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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  
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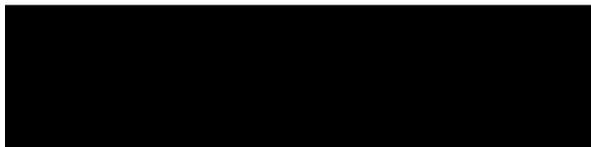
FILE: WAC 09 070 50950 Office: CALIFORNIA SERVICE CENTER Date: **NOV 30 2009**

IN RE: Petitioner:  
Beneficiary:



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:



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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics. The petitioner operates a ski and snowboard training school in Aspen, Colorado and seeks to employ the beneficiary as a ski coach for a period of three years.

The director denied the petition on March 19, 2009, concluding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim as a ski coach indicative of an individual with extraordinary achievement in athletics. The director observed that, based on the documentation submitted, the beneficiary meets only two of the eight evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the director ignored or overlooked substantial evidence establishing that the beneficiary meets three additional evidentiary criteria, and contends that such evidence clearly qualifies the beneficiary for the benefit sought. Counsel submits a brief and additional evidence in support of the appeal.

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.

The regulation at 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.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

*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:

- (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 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 either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence;
  - (8) Evidence that 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.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, and the petitioner's appeal. The beneficiary in this case is a 28-year-old native and citizen of Germany whose background in athletics includes competitive skiing and ski instruction. The beneficiary has also completed undergraduate and graduate degrees in sport science at the Technical University of Munich in Germany, and holds various sports and fitness coaching certifications. She is certified as a National Certified Ski Coach/Instructor by the German Ski Instructor Association, which is stated to be the highest coaching level attainable in Germany. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability in athletics so that she may serve in the position of ski coach, with responsibility for training and preparing athletes to compete at national and international levels.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

As a preliminary matter, the AAO notes that the petitioner has submitted evidence related to the beneficiary's achievements as both a competitive skier and as a ski coach.

While a competitive skier and a ski coach share knowledge of the sport, the two rely on different sets of basic skills. Thus, competitive skiing and ski coaching/instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

*Id.* at 918.

The statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." **Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007).** U.S. Citizenship and Immigration Services (USCIS) will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach. An instructor who has an established successful history of instructing players who compete regularly at the national level has a credible claim; an instructor of novices does not. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both a competitive skier and as a ski instructor.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The petitioner does not claim that the beneficiary has received a major, internationally recognized award comparable to the Nobel prize as a competitor or coach, or that she has coached or trained athletes who have received major, internationally recognized awards or prizes.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

As noted by the director, the decision of U.S. Citizenship and Immigration Services (USCIS) is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three or more of the criteria as required by the regulation does not necessarily establish that the alien satisfies the criteria and is eligible for O-1 classifications. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability. Here, the petitioner provided evidence related to five of the eight criteria, and the director determined that the evidence establishes that the beneficiary meets two of these criteria.

In order to meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(I).

The petitioner claims that the beneficiary is able to meet this criterion as both a competitive skier and as a coach of athletes who have received nationally or internationally recognized prizes or awards. The director acknowledged that the petitioner submitted evidence related to the beneficiary's athletic achievements, but did not include any analysis of this evidence.

The beneficiary indicates in her resume that she has 15 years of experience in competitive international alpine ski racing, and that she was a member of the German Ski Team between 1996 and 1998, but she does not list any nationally or internationally recognized awards among her achievements. In its letter dated January 9, 2009, the petitioner indicated that, as a member of the German National Ski Team, the beneficiary competed in the School World Championships, German National Championships, FIS (International Ski Federation), Europa Cup and Four Nationals Cup Circuits. The petitioner did not submit documentary evidence of the beneficiary's receipt of the listed medals or rankings.

In a request for additional evidence (RFE) issued on January 23, 2009, the director requested documentary evidence related to the beneficiary's national or international awards and evidence establishing the origin, purpose, significance and scope of each award.

In response to the RFE, the petitioner indicated that the beneficiary competed in the International School Sport Federation (ISF) World School Championships in 1997 as a member of the Werdenfel-Gymnasium from Germany, winning a Team Gold Medal. The petitioner stated that "this is a world-class award for athletes." The petitioner submitted a letter from [REDACTED], who states that the gold medal in World Schools Championships is considered a "world level award for pre-professional athletes."

The petitioner also submits a letter from [REDACTED] school teacher and coach at the Werdenfels-Gymnasium in Garmisch-Partenkirchen, Germany, where the beneficiary attended middle and high school. [REDACTED] confirms that the beneficiary was one of six skiers chosen for the school's ski team. He explains that ISF is recognized by the International Olympic Committee and is the "International Federation of official school sport organizations for pre-professional athletes."

Upon review, the AAO finds the beneficiary's receipt of a team gold medal in a competition that was limited to high school teams insufficient to establish that the beneficiary has received an internationally recognized award for excellence in the sport of skiing.

In response to the director's request to provide documentary evidence of the beneficiary's silver medal and fifth place finish at the German National Championships in 1997, the petitioner submitted a letter from [REDACTED]. [REDACTED] states that he served as the beneficiary's coach between 1994 and 1997 as the head coach of the German national junior team. He notes that selection for the junior development team is reserved for "the most promising athletes in Germany." [REDACTED] further states that, as a member of the junior development team, the beneficiary trained with national ski team members at the Olympic Training Center in Garmisch-Partenkirchen. Finally, he confirms that the beneficiary achieved her greatest success at the 1997 German National Junior Championships where she finished second in her age category in the Giant Slalom and 5<sup>th</sup> in Slalom. There is no primary evidence of the beneficiary's receipt of the silver medal at the 1997 national championship event.

The AAO is not persuaded that achievement of one silver medal in one junior level national competition is a significant award indicative of an athlete who has risen to the very top of the field. Even if the AAO deemed the award to be equivalent to a medal at a senior national competition, the beneficiary indicates in her resume that she was a competitive skier for 15 years. All of the beneficiary's notable success as a competitor appears to have occurred in 1997 when she was 15 or 16 years old, and there is no evidence that she enjoyed any similar competitive success at the senior level, or evidence that she continued to compete in national or international level competitions. Therefore, the evidence submitted with respect to the beneficiary's national and international awards does not demonstrate the requisite sustained national or international acclaim as a competitive athlete.

The director noted that the petitioner failed to submit any evidence that the beneficiary has been the recipient of nationally or internationally recognized prizes or awards for excellence in the coaching field. Finally, the director determined that "there is no evidence provided which clearly shows the alien has an established successful history of coaching athletes who compete regularly at the national level."

The AAO disagrees with the director's conclusion that there is "no evidence" submitted with respect to this criterion. Although the evidence does not establish the beneficiary's extraordinary ability as a competitive athlete, the petitioner can meet this criterion if it can establish that the beneficiary has coached athletes who have received nationally or internationally recognized awards for excellence in the sport; merely establishing that she has coached athletes who compete at the national level is not sufficient.

The beneficiary indicates in her resume that she has worked as a ski coach: (1) at the Olympic Training Centre in Garmisch-Partenkirchen, Germany during the 2005, 2006 and 2007 winter seasons; (2) at Skischule Garmisch Partenkirchen, during the 2003 through 2006 winter seasons; (3) at the petitioner's ski club in Aspen Colorado, during the 2002 to 2003 season, and (4) at Ski Club Garmisch from 1996 until 2000. The beneficiary does not mention the names of any athletes she coached or indicate that any of her students were national or international champions or medalists.

In its letter dated January 9, 2009, the petitioner stated that the beneficiary coached the German National Team at the Olympic Training Center in Garmisch-Partenkirchen during the 2005, 2006 and 2007 seasons. The petitioner stated that athletes coached by the beneficiary in Germany included, among others:

- i. [REDACTED], 2007 World Championship Gold, 2008 World Championship Overall Bronze, and Overall Gold in Super G and Combined, several World Cup victories.
- ii. [REDACTED] 2006, 2007 & 2008 World Cup Starts, 2006 Junior World Championships Silver and Bronze.
- iii. [REDACTED] 2005 World Cup Gold, 2006, 2007, 2008 World Cup Starts.
- iv. [REDACTED] 2005 World Championships National Team Event Gold, 2006 World Cup two (2) Silvers, 2007 World Cup two (2) Bronzes.

The petitioner also stated that, during the 2006, 2007 and 2008 seasons, the beneficiary "has trained some of the finest U.S. National Ski Team Members" at the Aspen Club Health and Performance Center, which "provides assessment, training and coaching services for endurance athletes," including, among others:

- i. [REDACTED] 2008 Overall Downhill World Champion, 2005 & 2007 Overall World Champion, 2005 World Championship Super G Gold, 2003 World Championship Gold, 2002 Winter Olympics two (2) silvers, total 31 World Cup victories.
- ii. [REDACTED] 2008 X-Games half-pipe Gold, 2006 Overall Grand Prix Gold, 2006 Winter Olympics Silver, 2005 U.S. Open Half-pipe Gold, 2005 X-Games Half-pipe Gold, etc.
- iii. [REDACTED] 2008 U.S. Nationals Silver and Bronze, 2004 World Cup Bronze, etc.

Finally, the petitioner stated that the beneficiary has served as a coach at its own Aspen, Colorado facilities during the 2002, 2003, 2007 and 2008 seasons, where she has trained "some of the most promising young skiers," including [REDACTED] and others who compete at the junior level.

The beneficiary's coaching experience was documented solely through testimonial evidence. The petitioner submitted a letter from [REDACTED] of the Olympic Training Centre for Alpine Skiing in Garmisch-Partenkirchen, who writes:

[The beneficiary] has been an unusually successful and enduring coach and former athlete at the Olympic Training Center. She has coached and trained Olympic Medalists, World Cup Winners and World Champions [REDACTED] Consequently, she is one of the only few coaches to have had the opportunity to participate at such a high level for such a sustained period of time.

\* \* \*

We are not aware of any other coaches who have enjoyed such an enduring and successful career. She has clearly risen to the very top of her field.

████████████████████ stated that the beneficiary, "as a volunteer coach" for the petitioning organization, has helped "a number of skiers to compete successfully at the national and international competitions." ██████████ states that her students include one first-place finisher and several top ten finishers at the Junior Olympics, "making her one of the most successful ski coaches in the USA and the world."

████████████████████ of the Ski Club Garmisch, states that the beneficiary "coached the most promising young athletes in Germany" during her tenure as a coach at the club. He discusses the beneficiary's later coaching positions with Ski Club Garmisch, Aspen Valley Ski Club and the Olympic Training center, and the beneficiary's coaching certifications and academic credentials in the sports science field, but does not indicate how he became aware of the beneficiary's coaching and academic activities over the last nine years. According to the beneficiary's resume, she served as a coach for Ski Club Garmisch between 1996 and 2000, when she was 15 to 19 years old. He states that he is "not aware of any other coaches who have enjoyed such a successful career."

████████████████████ of the German Ski Instructor Association and ██████████ states that the beneficiary "has been coaching and teaching skiing to beginners through professional level at the Ski School of Garmisch-Partenkirchen, the Ski Club Garmisch, the Aspen Valley Ski Club and many athletes from the Olympic Training Centre in Garmisch-Partenkirchen for the past 9 years." He states that the beneficiary was the "head coach for these teams" and that "these teams enjoyed their greatest success in national and international competitions" during the beneficiary's tenure as a coach.

\_\_\_\_\_ of the Aspen Club Health and Performance Center, states that she has known the beneficiary in an employee-employer and teacher-student relationship for six years. ██████████ states:

[The beneficiary] has extensive experience in coaching, assessment and training world class athletes. At our center, [the beneficiary] has had the opportunity to work/test and/or training Olympic athletes including ██████████ and ██████████ (all USA Olympians and/or medalists). At every level, she has been exemplary and the individuals she has worked with have found her skills invaluable.

head age class coach for the petitioning organization, indicates that the petitioner has "been fortunate to have had [the beneficiary] coach and volunteer for our organization for the past six years." ██████████ further states:

Her duties included working with our athletes, organizing and running physical conditioning practices, organizing races, communicating with parents and athletes, course setting, video analysis, tuning skis and refereeing. . . .

The work she has done with young athletes is outstanding. Several of her athletes are now skiing on a national and international level (██████████) both of whom won the J2 National Championships and later on became a member of the US Ski Team.

Finally, the petitioner submitted a letter from ██████████ head of the faculty for sport theory at the Technical University of Munich, who states that the beneficiary participated in several of his university classes in "elite squad competitive coaching at the highest performance level." He states that the beneficiary is "one of the most accomplished ski coaches in the international skiing industry," and notes her "extensive experience in coaching world class athletes."

In the RFE issued on January 23, 2009, the director noted that "the record contains no firsthand evidence of coaching or technical achievements by the beneficiary or by athletes who she has coached or assisted." The director reminded the petitioner that the O-1 visa classification is restrictive and requires extensive documentation of extraordinary achievement.

In response to the RFE, the petitioner asserted that the beneficiary "has played a leading coaching role" for the German National Ski Team, for the Aspen Club Health and Performance Center, and for the petitioning organization. The petitioner stated that it is "not aware of another coach in the world who has enjoyed such sustained success in ski competition." While the petitioner submitted a voluminous response to the RFE, the response did not include firsthand evidence of coaching achievements by the beneficiary or by athletes whom she has coached or trained.

As noted above, the director concluded that there is no evidence which clearly shows the beneficiary's established successful history of coaching top-level athletes.

On appeal, counsel asserts that the beneficiary has coached the German National Team and at leading ski clubs, and that while she served in that capacity, "these teams enjoyed their greatest success in international competitions, including the Olympics, World Championships and World Cups." Counsel states that "the awards her athletes received . . . should no doubt be imputed, at least in part, to the coach who helped these athletes realize their dreams."

Counsel once again provides a list of athletes claimed to be coached by the beneficiary during her tenure with the German National Ski team, the Aspen Club Health and Performance Center, and the petitioning organization, and quotes excerpts from the letters of ██████████, and ██████████. Counsel asserts that such evidence was ignored by the director, despite establishing that the beneficiary's "achievements in the industry as a coach are virtually unparalleled."

In support of the appeal, the petitioner submits a letter from ██████████ who states:

[The beneficiary] is an unusually accomplished ski coach and sport scientist and has extensive experience in coaching, assessment and training world class athletes.

While working at the Carmichael Training and Performance Centre at the Aspen Club, [the beneficiary] coordinated and planned all my assessments; exercise testing and physical training, as well as analyzing lactate kinetics, oxygen consumption and other physiological responses. Her knowledge, dedication and general concern training with me helped me to acquire the highest level of skill to compete in international ski competition.

In this capacity she has routinely served as a sport scientist with exemplary practical and international experience, finding her skills invaluable for my skiing career [sic].

██████████ does not state that the beneficiary ever served as his personal or team coach or trainer, nor does he indicate when or for how long the beneficiary worked with him, or that the beneficiary contributed significantly to his receipt of any nationally or internationally recognized awards. His statement is simply too vague to corroborate counsel's statement that the beneficiary served as ██████████ coach between 2006 and 2008.

According to the beneficiary's resume, she completed an internship at the Aspen Cancer Survivor Center and at "Carmichael Training Systems" in Aspen, Colorado between the months of July and October in 2006 and 2007, while she was an undergraduate student. She indicates that during the internship, she assisted with EKG stress testing, VO<sub>2</sub> max, blood lactate threshold, and body composition testing, performed data input and analysis, designed aerobic and strength training programs for healthy and non-healthy individuals, assisted with setup and clean up of equipment, and assisted with research, resulting in a submission to the American College of Sports Medicine national convention. Assuming that the beneficiary worked with ██████████ during this time, it is reasonable to conclude that the beneficiary was not providing services to him in the capacity of a head or personal coach or trainer while serving as a research intern at the center. Rather it appears that the beneficiary was primarily engaged in conducting research for her thesis, which is discussed further below.

On appeal, the petitioner has also submitted a letter from ██████████, who states:

I have known [the beneficiary] for more than 15 years in an athlete-athlete and later on in a coach-athlete relationship as an athlete of the German National Ski Team and Olympic Training Centre for the last 9 years and feel very comfortable addressing her competency as one of the most accomplished ski coaches and sport scientists in the skiing industry.

During her time coaching at the Olympic Training Centre in Garmisch-Partenkirchen, she coordinated all my physical training, writing training plans focusing on individual sport-specific training analysis, -adaptation, -organization, -frequency, -optimization, -periodization as well as performance diagnostic, exercise testing and evaluation.

Throughout the time that we have worked together at the Olympic Training Centre I enjoyed my greatest success in international competitions, including the Olympics, World Championships and World Cups.

The beneficiary indicates on her resume that she coached at the Olympic Training Centre in Garmisch-Partenkirchen during the 2005, 2006 and 2007 winter seasons, but she does not indicate on her resume that she

coached the German National Team. In fact, there is no independent corroboration of the beneficiary's employment as a coach of the German National Team. [REDACTED] of the German Olympic Training Center for Alpine Skiing, states that the beneficiary "coached and trained with Olympic Medalists, World Cup Winners and World Champions," but he does not indicate what role the beneficiary played in the success of the German team or individual athletes such as [REDACTED]

Overall, the record does not contain sufficient evidence of the coach-athlete relationship between the beneficiary and the successful athletes she is claimed to have coached, and the accounts of the persons providing testimonials do not fully correspond to the beneficiary's account of her own career as reflected in her professional resume. For example, there is no evidence to support [REDACTED] statement that the beneficiary has served as a "head coach" for any athlete or team or played a "leading role" in the success of any individual athlete. As noted by the director, the lack of firsthand evidence of the beneficiary's coaching achievements is apparent. For example, if the beneficiary was the head coach of a successful team or individual athlete who won nationally or internationally recognized awards, it would be reasonable to expect her to be able to produce some independent documentation of these coach-athlete relationships beyond testimonials from persons with whom she is personally acquainted.

Therefore, the petitioner has not established that the beneficiary has received nationally or internationally recognized awards for excellence in coaching or that she has coached athletes who have received such awards.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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 director determined that the beneficiary meets this criterion. The AAO disagrees with the director's determination. The beneficiary is a member of the Ski/Coach Trainer Education Program (STEP) of the Technical University of Munich in Germany, an eight-member invitation-only group of sport scientists which "conducts and provides research results in cutting edge science and innovations for national and international ski congresses and the German National Ski Team and German Ski Federation." [REDACTED] indicates that membership can only be gained by his personal invitation and is "reserved for only the most accomplished coaches and scientists in the skiing industry." He further states that "members bring along extraordinary skills in ski coaching and teaching, are certified ski coaches and instructors, are well educated – holding Diplomas in Sport Science, Math or Biomechanics, and/or have a ski competitor background. He indicates that the beneficiary "fulfilled all requirements to got [*sic*] invited."

The record does not contain any independent documentation regarding STEP, its history or its activities, and it remains unclear how members are screened and selected by [REDACTED]. It also has not been established that STEP could be considered an "association" which requires outstanding achievements of its members as judged by recognized national or international experts in the discipline of ski coaching. As such, the AAO cannot affirmatively determine that membership in this group is indicative of the beneficiary's national or international acclaim as a ski coach.

The petitioner further indicates that the beneficiary is a member of the Dynastar Skis Industry Opinion Leader

Team in Germany. The petitioner submitted a letter from [REDACTED] signed by [REDACTED] of Events and Promotions, and [REDACTED], who state:

Our Team is a collection of respected professional skiers which have an active influence on the skiing community; it is not a Team that consists of ranking or status. It is a collection of Professional skiers that use our brands, and in return we receive feedback on market information, trends in the industry, and even problems that occur. Each ski company has such a team from International level down to the local country distributors. . . .

Our team for Germany/Austria is approximately 70 people made up from people in different aspects of the ski industry it includes Ski Instructors, Ski Racers, Coaches, Shop employees, Mountain Guides and respected skiers in local ski areas. There is no rank or level it is just a community of skiers who need help from one another in able to progress and maintain a certain level of presence on the market.

[REDACTED] indicates that membership determinations are made by the company's sales, marketing and promotion staff, and that the beneficiary was chosen due to her connections with ski racing, ski instructors, the Technical University of Munich, and the town of Garmisch, Germany.

Upon review, the petitioner has not established that the Dynastar Skis Industry Opinion Group is an "association" or that it requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. As stated by the organization's representative, it is merely "a community of skiers" who are willing and able to assist Dynastar Skis with its marketing research and promotion activities. The petitioner has not established that the beneficiary meets the second criterion based on her memberships in STEP or the Dynastar Skis Industry Opinion Group.

To meet the third criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

In evaluating the petitioner's evidence, the director noted that the petitioner "submitted a plethora of newspaper articles" but noted that it was not clear whether the articles appeared in professional or major trade publications or other major media. The AAO notes that all of the articles appear to have been published during the mid 1990s when the beneficiary skied competitively as a teenager, and the majority of them merely provide the beneficiary's results in various races and events. The petitioner did not provide any published materials referencing the beneficiary's work as a ski coach, instructor or trainer, or any published materials relating to competitive athletes who have been coached by the beneficiary. Counsel does not address this criterion on appeal. The AAO concurs with the director's determination that this criterion has not been met.

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary'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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). The petitioner claims that the beneficiary meets this criterion.

In its letter dated January 9, 2009, the petitioner stated:

[The beneficiary] has served as a judge at national competitions. From 2002 to 2003, [the beneficiary] served as a judge for as [*sic*] a Technical Delegate at the Roaring Fork Series in Aspen, Colorado. The Technical Delegate (TD) is the person who has advisory control over pre-race and race operation and together with other members of the Jury, has complete control over the competitive operation of the race. The TD along with the Jury have the final decision in all matters of racer protection and have the authority to cancel, postpone or annul the race if necessary. In all cases, the TD is the representative of the governing body by whom he/she is appointed.

In the RFE issued on January 23, 2009, the director instructed the petitioner to provide evidence to establish the significance of the work judged by the beneficiary and the criteria used to choose her as a judge. The director further requested additional evidence relating to the beneficiary's experience as a Technical Delegate at the Roaring Fork Series.

In response, the petitioner submitted a letter dated February 9, 2009 from [REDACTED] who states:

I am responsible for organizing and am hosting various races including a J3 Super G Junior Olympic Qualifier and three Roaring Fork Series events throughout each season. With the privilege of hosting races for children from all of Colorado, Arizona and New Mexico comes the responsibility of having a fair race for each competitor. The assigned Jury is in charge of making sure our events are fair and [the beneficiary] has been part of this Jury on more than one occasion. Her judgment and experience as a Technical Delegate and Referee are of utmost value to our organization.

As a Technical Delegate, [the beneficiary] was the official representative of the governing body. Upon appointment, the Technical Delegate became a member of the Organizing Committee (OC). The role of the Technical Delegate is to make sure that the rules and directions of the governing body (USSA and/or FIS) are observed, to see that the event runs smoothly, to verify that the requirements of the homologation report . . . are met to advise the organizers within the scope of their duties. [The beneficiary] served as the Technical Delegate for many of our Roaring Fork Series Races through the winters of 2003 and 2008.

[REDACTED] further states that the beneficiary has served as Referee for two events. She concludes by stating that "the fact that [the beneficiary] was selected to serve on numerous Juries speaks to her outstanding ability and fair judgment," and that "very few coaches rise to the challenge of becoming a Technical Delegate or Referee."

The petitioner submitted race results which provide additional information regarding the races for which the beneficiary has served as a Technical Delegate or Referee:

- Wilder Dright Memorial SG J3 JO Qualifier, January 20-21, 2008 (13-14 year-old girls)
- Wilder Dright Memorial SG J3 JO Qualifier, January 20-21, 2008 (13-14 year-old boys)
- Roaring Fork Series SL 2, February 16, 2003 (3-10 year-old girls and boys)
- Roaring Fork Series SL 1, February 15, 2003 (3-10 year-old girls and boys)
- Roaring Fork Series GS W, January 4, 2003 (5-10 year-old girls)
- Roaring Fork Series GS M, January 4, 2003 (5-10 year-old boys)

The director determined that the petitioner did not establish that the beneficiary meets this criterion. The director stated that "the petitioner must demonstrate that the beneficiary's sustained national or international acclaim resulted in his [*sic*] selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve accomplished professionals in the beneficiary's field." The director acknowledged the evidence submitted, but found that there was no documentary evidence of national or international publicity surrounding the competition, and the competitions for which the beneficiary served as referee and technical delegate appeared to be local or regional in scope.

On appeal, counsel asserts that the director "created a new and improper legal standard, finding that the beneficiary's work as a judge must be at a national level," and argues that such requirement is not found in the regulations. Counsel emphasizes that "the bottom line is that the beneficiary had been asked to serve as a judge of the work of high-level competitors in a series of important competitions and that the petitioner provided documentation to that effect." Counsel notes that each event at which the beneficiary served as a referee or technical delegate was assigned a U.S. Ski and Snowboard Association (USSA) race code, and states that USSA "supports the highest levels of ski competition, thus sponsored the national qualifying events over which the beneficiary served as a judge." In support of these claims, the petitioner submits information obtained from USSA's web site. According to the information provided, USSA is the national governing body for Olympic skiing and snowboarding. It "sanctions over 4,100 events annually," and "over half of USSA sanctioned events are scored to its national ranking lists, providing measurements for athlete advancement." Over 400 ski and snowboard clubs implement the USSA's programs.

Upon review, the AAO concurs with the director's determination that the beneficiary does not meet this criterion. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). 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. § 214.2(o)(3)(ii).

The evidence indicates that the USSA sanctions thousands of events annually. Although USSA is a national governing body, it does not automatically follow that the beneficiary's experience as a referee and technical delegate at a handful of regional, junior-level events in the 2002-3 and 2007-8 seasons is indicative of her

sustained national or international acclaim in the sport. The specific criteria for selection of technical delegates and referees have not been adequately explained. Furthermore, it is reasonable to believe that such jury positions are held by dozens if not hundreds of individuals in any given year, given the large number of USSA-sanctioned events. It is reasonable to consider the age and level of the participants and the scope of the events themselves in determining the significance of the beneficiary's participation in them as a judge or referee. Based on [REDACTED] statements and the submitted race results, it is apparent that the events at which the beneficiary served as referee or technical delegate were junior-level events with regional competitors.

Counsel further states that the petitioner now has additional evidence related to the criterion which would meet the standard as explained by the director. The petitioner submits evidence that the beneficiary served as Chief of Race for the Ladies and Mens Giant Slalom events at the J2 National Junior Olympic FIS Race held at the petitioner's ski club on March 12, 2009. [REDACTED], explains that the event is sanctioned by Federation International Ski, the international governing body for snow sports, and serves as a national championship race for 15 and 16 year old (J2) athletes from across the United States.

While the AAO acknowledges that the new evidence is more persuasive than that submitted previously with respect to this criterion, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). As the petition was filed on January 14, 2009, evidence relating to events after that date may not be considered. Therefore, the petitioner has not established that the beneficiary meets this criterion.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner does not claim that the beneficiary meets this criterion.

The sixth criterion requires the petitioner to submit evidence of the beneficiary's authorship of scholarly articles in the field, in professional journals, or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

The evidence of record indicates that the beneficiary, who has a graduate degree in Sport Science, has authored three articles in the field of sport science. The petitioner indicates that the beneficiary's thesis, "Physiological Response to Graded Exercise Testing: A Comparison between Cancer Survivors and Health Controls," was received "with great enthusiasm in the sport industry, and has been nominated to be published in *Medicine & Science in Sports & Science*, the Official Journal of the American College of Sports Medicine (ACSM). The petitioner indicates that the thesis was presented at the ACSM's 55<sup>th</sup> Annual Meeting in May 2008. The beneficiary also co-authored a research paper, "Physical Function of a Breast Cancer Survivor followed for One Year" which was published in *Medicine & Science in Sports & Science*. Finally, the petitioner stated that the beneficiary's research paper "Practical and Scientific Proven Tests Designed for the Functionality of Sport Clothing," has been approved by the Bavarian State Ministry of Economy and Technology. The petitioner indicated that "the project spearheaded by [the beneficiary's] paper will be the pioneer project between the Ministry and TUM" which will "use new methods and test strategies to judge the functionality of sport clothing."

The director found that graduate students in most academic fields are required to conduct research and write a thesis as a requirement for graduation, and determined that almost any graduate student could present evidence of a similar body of work. The director further observed that the research papers were written in collaboration with others in the field, and that she was not necessarily the principal author of such works or able to take the entire credit for the work. Finally, the director found that the research papers do not directly relate to or contribute to the beneficiary's field of endeavor.

On appeal, the petitioner submits a new letter from [REDACTED] who served as the supervising professor for the beneficiary's thesis work and supervised her in relation to all data collection and analysis for the project. [REDACTED] states:

[The beneficiary's] understanding of human physiology and coaching and the application of that knowledge to persons suffering from cancer without question qualify her as an exceptional professional within the area of sports science. At the upcoming National meeting of the American College of Sports Medicine, approximately 50 papers will be presented in the area she has done research and published. Of those papers, not a single paper was submitted independently (without other co-authors) and none that we can ascertain was submitted by a master's level student. . . .

further notes that although the beneficiary was a co-author on two research papers, "her work had a direct impact on research including: patient care (exercise program design), data collection, data analysis." He observes that the beneficiary possesses credentials "far beyond virtually ANY ski coach," and that her understanding of the human body, health and exercise programming make her an exceptional coach.

Upon review, the petitioner has not established that the beneficiary meets this criterion. The AAO does not question that the beneficiary's academic background in sports science would provide her with technical knowledge not found among all athletic coaches. However, the AAO cannot conclude that it is particularly unusual for an athletic coach to have studied sport science at the university level, or that the beneficiary's studies automatically elevate her accomplishments and recognition above other coaches who have not achieved a master's level of education in sports science. The beneficiary's extraordinary ability must be measured by her documented sustained national and international acclaim in her field.

The beneficiary's authorship of three articles in the sports science field is notable, particularly for an individual who completed her undergraduate and graduate degrees in 2007 and 2008, respectively. However, the petitioner has not established how her scholarly publications are indicative of the beneficiary's extraordinary ability as a ski instructor or coach. As noted above, 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 in the beneficiary's field of endeavor. There is no evidence that the beneficiary's scholarly publications in the sports science field have garnered her sustained national or international acclaim or recognition for achievements in the ski coaching community.

In order to meet the seventh criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), the petitioner must establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. The director determined that the beneficiary met this criterion based on the initial

evidence and has not further addressed this issue. The AAO disagrees with the director's determination. Evidence of the beneficiary's prior employment is limited to testimonials from her employers and a copy of the beneficiary's resume. The beneficiary has worked as a coach for several ski schools which appear to have a distinguished reputation; however, the record is lacking in evidence that the beneficiary was employed in a critical or essential capacity for any of these establishments. The evidence of record does not clearly establish the nature and significance of the beneficiary's coaching role within each organization, and she indicates her previous job titles simply as "ski coach" on her resume. The evidence does not reflect that she has held a head, leading or senior coaching position. Accordingly, the AAO cannot affirmatively determine that this criterion has been met.

The eighth and final criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). The beneficiary has been offered an annual salary of \$36,000 and "equipment and travel expenses." The petitioner does not claim that the beneficiary meets this criterion.

Overall, the record does not establish that the beneficiary has extraordinary ability in athletics which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements as a ski coach have not yet risen to this level. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.