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BZ

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: AUG 31 2005  
SRC 04 007 53127

IN RE: Petitioner: [REDACTED]  
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:

SELF-REPRESENTED

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.

*Mari Johnson*

*R* Robert P. Wiemann, Director  
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. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability as a "management consultant." The petition states that the petitioner will "assist in fund raising activities for Manna Relief Ministries working with medically fragile children." The petitioner initially submitted a June 19, 2003 letter from Sam Caster, Chairman and Chief Executive Officer of Mannatech, Incorporated that was captioned "TN Visa Application for [REDACTED] and [REDACTED]. The letter "[confirms] that [REDACTED] and [REDACTED] have been selected as an [sic] official spokespersons for Manna Relief, a non-profit children's health ministry," employment which is "[i]n addition to [the petitioner's] post as a distributor for Mannatech<sup>TM</sup> Incorporated." A handwritten resume of the petitioner was the only other supporting evidence initially filed with the petition.

On September 13, 2004, the director issued a Notice of Intent to Deny (NOID) requesting the petitioner to submit evidence of a one-time achievement or evidence that he met at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). In response to the NOID, the petitioner submitted a letter from the Executive Director of MannaRelief, a letter from the petitioner, a copy of the petitioner's bachelor's degree, one recommendation letter, documents relating to the petitioner's participation in the 1992 Olympic games in Barcelona as a member of the Canadian Track and Field Team and his achievement at the 1993 World Indoor Track and Field Championships. The director determined that the record did not establish the petitioner's eligibility under any of the regulatory criteria and denied the petition. On appeal, the petitioner submits five additional support letters and copies of articles written by the petitioner and his collaborators that were published in a medical journal. The petitioner claims these documents evidence his eligibility under the fifth, sixth, and eighth criteria at 8 C.F.R. § 204.5(h)(3). The petitioner's claims and the evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed.

We first note the minimal evidence submitted regarding the petitioner's claimed field of expertise and how it relates to his proposed employment. Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), allows immigrant classification of aliens with "extraordinary ability in the sciences, arts, education, business, or athletics." Although neither an employment offer nor a labor certification is required for classification as an alien with extraordinary ability, the petition must still show that the alien will continue working in his claimed area of expertise. Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii). The record in this case demonstrates that the petitioner is a former athlete, but he now seeks employment as a "management consultant" for a non-profit ministry. The petitioner has not stated in which category he claims extraordinary ability and the record only briefly describes his proposed job duties. The petition states that the petitioner will be employed as a "Management Consultant" to "assist in fund raising activities for MannaRelief Ministries working with medically fragile children," but the November 23, 2004 letter of [REDACTED] submitted on appeal states that the petitioner has been "selected as an official spokesperson" for MannaRelief and that in addition to fund raising, he "will also be involved in sports management consulting with major sporting organizations, universities and high schools with implementation of our sports products." These duties are "[i]n addition to his post as a distributor for Mannatech<sup>TM</sup> Incorporated." Mr. [REDACTED] explains that "[t]he petitioner's] international status as a world class athlete will strengthen our exposure, sales and distribution." These statements indicate that the petitioner seeks classification as an alien with extraordinary ability in both athletics and business and we have evaluated the record accordingly. The evidence submitted, the petitioner's claims and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The record contains six certificates and letters documenting the petitioner's participation in the 1992 Olympic Summer Games in Barcelona. In his personal statement, the petitioner claims he was the captain of the Canadian track and field team at the 1992 Olympics. The petitioner also submitted evidence that he participated in the 1993 World Indoor Track and Field Championships where he finished in fifth place in the 800-meter finals and in third place in the medley relay. The petitioner explains in his personal statement that he "retired from [his] sport in 1993 by breaking the Canadian 800m record at the World Championships in Stuttgart, Germany," although the record does not document his alleged Canadian 800 meters record. Simply going on record without supporting documentary evidence is not sufficient to meet 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)). This evidence demonstrates the petitioner's limited past acclaim as an athlete.

The record does not establish, however, that the petitioner sustained his past acclaim as an athlete through his subsequent employment in an athletic-related business or his ministry work during the decade following his retirement from competitive sports and preceding the filing of his petition. The petitioner submits no evidence that he has received any nationally or internationally recognized prizes or awards for his athletic-related business or ministry work over the past ten years. Accordingly, the petitioner does not meet this criterion.

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

As discussed above under the first criterion, the record demonstrates that the petitioner is a former athlete who participated in major international competitions. The evidence submitted does not indicate, however, that the petitioner's athletic accomplishments made major contributions to his field. Although he participated in the 1992 Olympic Games in Barcelona, the petitioner apparently did not win a medal at those games. In his personal statement, the petitioner claims to have broken "the Canadian 800m record at the Wor[l]d Championships in Stuttgart, Germany" and maintained the record for ten years. The petitioner submitted evidence of his performance at these championships, but the record contains no corroborative evidence to support his claim that he set a Canadian record for the 800 meters race, which he held for ten years. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Id.* Even if the petitioner's past athletic contributions were sufficiently documented, they alone would be insufficient to satisfy this criterion because they would indicate only past – not sustained – acclaim.

The record also does not demonstrate that the petitioner has made original business-related contributions of major significance to his field. On appeal, the petitioner submitted three recommendation letters from individuals he has worked with on athletic-related business. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has earned sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

Chair of the Physical Education Department at Hardin-Simmons University in Abilene, Texas, states that his department and the petitioner "have partnered over the last two years to address health issues and collaborate by means of research projects." Specifically, Mr. [REDACTED] explains that their "main research collaboration was conducted with help from the Hardin-Simmons University men and women's soccer teams regarding recovery for athletes with injuries. The significant results of the research has been [sic] presented and published." [REDACTED] Associate Professor within the Physical Education Department at Hardin-Simmons University, affirms this collaboration and states that he has "worked very closely with [the petitioner] over the last couple of years in conjunction with Mannatech Corporation. . . . In particular, [the petitioner] and I have worked side by side in completing a research study investigating the efficacy of a pre-exercise drink manufactured and marketed by Mannatech." The petitioner submitted a copy of an article entitled "The Effect of a Pre-Exercise Performance Drink on Aerobic Performance" co-authored by Professor

██████████ and Mr. ██████████ that was published in the September 2004 edition of *Proceedings of the Fisher Institute for Medical Research*, but the article does not mention the petitioner. Even if the petitioner was identified, we could not consider the article as evidence of his contributions because it was published after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, ██████████ a doctor of osteopathy employed by Family Practice Associates in Abilene, Texas, affirms that the petitioner has been working with him "for the last year establishing protocols, monitoring and conducting research with me. Our study involves Mannatech Products and patients with ██████████. We have had a preliminary paper published and the final results (end of study) are anticipated at approximately April 2005." The record contains an article co-authored by Dr. ██████████ entitled "Preliminary Results of the Effects of Nutraceutical Dietary Intervention in Myasthenia Gravis" that was published in the September 2004 edition of *Proceedings of the Fisher Institute for Medical Research*. The second page of this article states, "Subjects were provided their dietary supplements while on the study for the duration of one 1 year. Manna Relief Ministries and Fisher Institute for Medical Research provided the supplements at no cost." The petitioner is not identified or mentioned in the article, but even if he were we could not consider the article because it was published after the petition was filed. The petitioner must demonstrate his eligibility at the time of filing. *Id.*

The only other evidence of the petitioner's recent work is a copy of an article entitled "Dietary Supplementation and Several Hospital Employees: Three Case Reports." The petitioner is a co-author of this article, which was published in the March 2004 edition of *Proceedings of the Fisher Institute for Medical Research*. Again, we cannot consider this article because it was published after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Id.*

While Mr. ██████████ Professor ██████████ and ██████████ (Chief Operating Officer of BUJO Enterprises Incorporated whose letter was submitted with the petitioner's NOID response) all praise the petitioner's character, integrity and interpersonal skills, they do not identify any specific work of the petitioner that has been corroborated by independent evidence in the record as having made contributions of major significance to sports medicine, athletic-related or ministry-related business consistent with the requisite sustained acclaim. Consequently, the petitioner does not meet this criterion.

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As discussed above under the fifth criterion, the record contains evidence of one article co-authored by the petitioner that was published in March 2004. We cannot consider this evidence because it was published after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Id.* The record contains no evidence of any articles written by the petitioner that were published prior to filing and have been cited or otherwise recognized in his field. Consequently, the petitioner does not meet 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 petitioner's resume states that he was "President of the Athlete Council for Athletics Canada" and "Captain of Canada's Olympic Track & Field Team Barcelona, Spain 1992," but the record contains no evidence to corroborate these claims. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Yet even if the petitioner's past leadership positions as an athlete were documented, they alone would not suffice to meet this criterion because they would only evidence his past acclaim as an athlete and the record does not indicate that the petitioner has earned the requisite sustained acclaim through his subsequent work.

Mr. [REDACTED] of MannaRelief and Mr. [REDACTED] of Mannatech Incorporated verify in their letters that the petitioner has been employed as a distributor for Mannatech Incorporated and as a spokesperson for MannaRelief. The petitioner explains in his personal statement that "I am truly blessed to work for Mannarelief to touch so many kids' lives on a daily basis. The opportunity to raise funds to help these fragile kids and giving their families hope is a blessing and prayer though our programs. Mannarelief has now sent our products globally to assist kids that otherwise will not have an opportunity." In his October 13, 2004 letter, Mr. [REDACTED] states that "[the petitioner's] international status as a person as well as an Olympic world class athlete will strengthen our ability to touch children around the world. Mr. and Mrs. [REDACTED] have been a tremendous asset to our organization over the last several years." In both of his letters, Mr. [REDACTED] also affirms that the petitioner's "international status as a world class athlete will strengthen our exposure, sales and distribution." Professor [REDACTED] of Hardin-Simmons University adds that without the petitioner, his research collaborations with Mannatech "would have never existed beyond an idea or been the impetus behind current studies in progress as well as others in the making." Professor Byars also explains that he is "a current Mannatech associate and can speak with complete confidence that without [the petitioner's] guidance and leadership I would not be experiencing the personal health and financial benefits that I do today."

While these letters indicate that the petitioner has made valuable contributions to Mannatech and MannaRelief, the record contains no evidence that either establishment has a distinguished reputation. Moreover, the record does not show that the petitioner's role at either Mannatech or MannaRelief has earned him sustained national or international acclaim in sports medicine-related or ministry-related business. Accordingly, the petitioner does not meet this criterion.

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 was an accomplished athlete who competed in major international championships and has since made valuable contributions as a sports management consultant and ministry spokesperson. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as an athlete or business consultant placing 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 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 sections 203(b)(1)(A) or 203(b)(2) of the Act, 8 U.S.C. §§ 1153(b)(1)(A), 1153(b)(2).



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**ORDER:** The appeal is dismissed.