

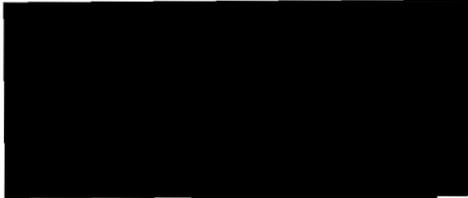
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**U.S. Citizenship
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Services**

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 01 2006
LIN 04 225 50217

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:



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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel for the petitioner argues that the director “failed to properly apply the law in 8 C.F.R. § 204.5(h) by creating an insurmountable standard.”

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). 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 earned sustained national or international acclaim at the very top level.

This petition, filed on August 2, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a speed skating coach.

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, international recognized award). Barring the alien’s receipt of such an award, the regulation 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. The petitioner has submitted evidence pertaining to the following criteria.

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

It is not clear that significant awards exist for speed skating coaches; however, national awards won by teams or individuals coached by the petitioner may be considered as comparable evidence for this criterion pursuant to 8 C.F.R. § 204.5(h)(4).

The petitioner submitted a June 14, 2005 letter from [REDACTED] Korea Speed Skating National Team Skater, stating:

Back in January 2003, I won two gold medals in Aomori, Japan during the 5th Winter Asian Game in 1,000-meter with a time of 1:13.83 seconds, and also in 1,500-meter with a time of 1:54.65 seconds.

I was able to win many medals and set the world record because of [the petitioner] who trained me to become a professional skater. He taught me how to be the world-class top skater.

The record includes material printed from the internet and other independent evidence confirming the information provided by [REDACTED]. The petitioner also submitted a letter from the president of the Korea Skating Union confirming that the petitioner served as Head Coach for the Korean National Team from June 2002 to June 2003.¹ We find that the petitioner's evidence is adequate to satisfy this criterion.

The petitioner's appeal was filed on October 17, 2005. Several months after filing the appeal, the petitioner submitted further evidence on August 21, 2006. There is, however, no regulation that allows the petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states "[t]he affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one." On appeal, the petitioner indicated only that further information would be forthcoming within thirty days; he had not requested (let alone been granted) additional time for a later submission, nor had he shown good cause to warrant an extension. The regulations do not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication. Therefore, we are not required to consider submissions received subsequent to the thirty-day period requested by the petitioner. Any consideration at all given to such untimely submissions is discretionary. On August 21, 2006, the petitioner submitted a certificate dated April 26, 2006 conferring him with "The Colossus Order of Sports Merit."

¹ We acknowledge the director's observation that material from the Korea Skating Union indicates that the 5th Winter Asian Games took place January 18th – 19th, 2003, while material from the Korean Olympic Committee and the official websites of the Japanese Olympic Committee and the Asian Olympic Committee reflect that the games took place February 1st – 8th, 2003. The existence of this discrepancy regarding the exact date of the competition, however, is overcome by independent and objective evidence showing that the petitioner and [REDACTED] were both present at the event and that [REDACTED] won two gold medals. For example, the record includes comprehensive results from the competition, the petitioner's coaching identification badge (stating "valid 14 January to 22 February, 2003"), and media reports confirming the presence of [REDACTED] and the petitioner at the event. See also the 5th Winter Asia Games website, http://www.net.pref.aomori.jp/awagoc_web/result/sokuho.html, (accessed August 23, 2006), which includes a listing of the official comprehensive results for the competition.

Apart from being untimely, this evidence came into existence subsequent to the petitioner's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Subsequent developments in the alien's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

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, the 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, standardized test scores, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the International Skating Union and the Korean Skating Union. The record, however, does not include the membership bylaws or the official admission requirements for these organizations. There is no indication that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

Published materials 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 director's decision stated:

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. The record does not illustrate that the petitioner meets this criterion.

In the initial submission, the petitioner submitted three articles as evidence for this criterion. The first article was a brief interview with the petitioner published by the *To-Oh Daily Press*. While the article was primarily about the petitioner there is no information regarding the *To-Oh Daily Press*, and no indication that this is a major publication. Small or regional publications do not meet this criterion, as they do not reach a national audience and are not indicative of national or international acclaim. The other articles, printed from websites for *Sports Today* and *YSN*, are not primarily about the petitioner. While he is briefly mentioned in each, neither article is specifically about him. There is also no

evidence regarding the nature of either publication or whether such publications are major publications.

The Service's request for evidence asked the petitioner to provide evidence of the readership and circulation of the *To-Oh Daily Press* and to document any other articles primarily about him which had been published as of the time of filing. The petitioner provided no information regarding the *To-Oh Daily Press*. The petitioner did submit two additional articles, one from *Joon gang Daily Newspaper (Seattle Edition)* published January 29, 2005 and one from *Media Hankook* published October 22, 2004. The petitioner was the primary subject of the articles. However, there is no information regarding the nature of the publications and at least one, the *Joongang Daily Newspaper*, appears to be regional rather than national or international in nature. There is nothing to illustrate that either periodical is a major publication. In addition, both articles were published subsequent to the filing of the petition. An alien seeking classification as an alien of extraordinary ability must establish eligibility as of the time the petition is filed. Subsequent accomplishments may not be considered, as they do not speak to the petitioner's eligibility at the time of filing.

Therefore, the record indicates that, as of the time the petition was filed, the petitioner had been the subject of a single article. There is nothing to indicate that the periodical which published the article is a major publication and, even if it were, one article is not evidence of sustained national or international acclaim.

We concur with the director's findings. On appeal, the petitioner offers no arguments or evidence addressing the director's observations. Therefore, the petitioner has not established that he meets this criterion.

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

The director's decision stated:

The petitioner asserts that he meets this criterion based on his selection as a referee and on his participation as a commentator during the Olympic Games in 2002. However, the record does not sufficiently establish that the petitioner meets this criterion.

First, the petitioner submitted a certificate indicating that he completed an umpire training and study course in Short Track Skating on November 16, 1985 from the Korea Skating Union. This indicates that the petitioner received training to become a referee, but does not indicate that he was chosen to act as a judge of others based on national or international acclaim. A referee generally observes competition play and determine violations of the rules of play, but are not generally judges as thought of in this context. Further, any judging duties are performed as a function of the job, a position which is also held by a multitude of officials who have passed the minimum training requirements and which is not indicative of acclaim.

The petitioner also submits evidence that he was approved as a referee by the International Skating Union effective August 1, 2003. While this shows that he was approved to act in the capacity of a

referee for international competition, it still does not demonstrate that he meets this criterion. First, although the evidence indicates that those chosen were nominated by members of the International Skating Union, there is nothing to indicate the criteria for nominations and nothing to establish that selection was based on or is indicative of sustained acclaim in the field. The Service specifically requested the petitioner to provide documentation regarding the criteria for selection, but the petitioner failed to submit any such documentation. Further, while the evidence indicates that the petitioner was one of more than 100 people approved to act in this capacity, there is nothing to illustrate that he ever actually performed in such a capacity. The petitioner was approved as a referee only three days before he entered the United States, and there is nothing to indicate that he participated as a referee in any international skating events between his entry and the filing of this petition one year later. . . . Selection is not the same as participation, and the petitioner must have actively acted as a judge of others to meet this criterion.

Finally, while the evidence does contain an identification card stating that the petitioner was a commentator during the 2002 Olympic Winter Games, there is nothing to suggest that this involved judging the work of others. Commentators generally report the action of the competition along with their own observations, but do not officially judge the work of others as considered by regulations. The petitioner provided no evidence to suggest that his role as a commentator actively involved judging the work of others in the field.

We concur with the director's findings. The plain wording of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." The record, however, includes no evidence showing the petitioner's actual *participation* as a judge of the work of others at the national or international level. On appeal, the petitioner offers no arguments or evidence addressing the director's observations. Therefore, the petitioner has not established that he meets this criterion.

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

On appeal, counsel states:

[T]he petitioner provided evidence that his team, under his leadership placed in the top standings in regional games against Asian nations. . . . For the Korean Speed Skating Team to rank above or defeat Japanese or Chinese teams is a matter of national pride. Thus, the accomplishments presented by the petitioner were dismissed without being sufficiently accorded proper status based upon their cultural impact.

Nationally or internationally recognized prizes or awards won by teams or individuals coached by the petitioner are far more relevant to the criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion which the petitioner has already fulfilled. Regarding the petitioner's leadership of the national team, this role falls under the criterion at 8 C.F.R. § 204.5(h)(3)(viii), another criterion that the petitioner has fulfilled. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for nationally or internationally recognized prizes or awards, original contributions of major significance, and performing in a leading role for a distinguished organization, Citizenship and Immigration Services (CIS)

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.

In order to satisfy this criterion, the petitioner must show that his coaching contribution has demonstrably influenced the greater field at the national or international level. Regarding the “cultural impact” of the Korean National Speed Skating Team’s rankings at international competitions during the petitioner’s tenure as coach, there is no evidence showing the extent of this impact on Korean culture or the extent of such impact specifically attributable to the petitioner (as opposed to the athletes themselves). In this case, the petitioner has failed to demonstrate a specific original coaching accomplishment that rises to the level of contribution of major national or international significance. The petitioner has not established that he meets this criterion.

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

The petitioner submitted evidence from the Korea Skating Union indicating that he served as the head coach for the Korean National Speed Skating Team.

On appeal counsel states: “As the head of the national team the petitioner was in a class of coaches by himself This national honor was not discussed by the [director] and not accorded any weight as part of the decision.”

Counsel’s observation is incorrect. The director’s decision specifically stated: “After consideration, the Service finds that the petitioner meets this criterion.” We concur with the director’s finding that the petitioner meets this criterion based on his role as head coach for the Korean National Speed Skating Team.

The regulation at 8 C.F.R. § 204.5(h)(3), however, requires that at least three criteria must be fulfilled to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the 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.

ORDER: The appeal is dismissed.