



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B₂



FILE: [REDACTED] SRC 06 164 50918

Office: TEXAS SERVICE CENTER Date:

MAR 24 2008

IN RE: Petitioner:
Beneficiary:



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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 submits a brief and additional evidence. For the reasons discussed below, we uphold the director’s decision.

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

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a golfer. At the outset, we note that the reference letters speak more to the petitioner's potential than his current status as a top player. For example, ██████████ Golf School confirms that the petitioner booked 50 hours worth of lessons at the school. ██████████ attests to the petitioner's "potential," concluding that he will benefit from training in the United States to "achieve domination in the Asian Tour and possibly, even making the US PGA tour." ██████████ a member of the PGA tour and the petitioner's former fellow student at Brigham Young University, also attests to the petitioner's "potential," concluding that the petitioner "has the stuff to make it on the P.G.A. tour." While the petitioner's references and evidence in the record suggest that the petitioner can obtain better training and support in the United States than in his native country, we concur with the director that the classification sought is limited to those who have already reached the top of their field, not those merely deemed to have the potential to make it there.

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). Counsel asserts for the first time on appeal that the petitioner has demonstrated a one-time achievement based on his winning international junior competitions. Specifically, in the 1980's, the petitioner won the Junior World Championship in San Diego once each in the following age categories: 9-10, 11-12 and 13-14.

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

A junior tournament, limited only to young golfers and, necessarily, excluding the most experienced and renowned members of the field, cannot be said to be a major internationally recognized award. While winners of these tournaments may go on to be nationally or internationally acclaimed, the junior tournament itself is not a one-time achievement such that junior tournament winners need not submit evidence to meet at least three of the regulatory criteria.

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 that, he claims, meets the following criteria.¹

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

As stated above, the petitioner won the Junior World Championship in his age group three times in 1981, 1983 and 1985. The petitioner also placed 19 in the College All-America Golf Classic in 1990. The petitioner submitted a plaque listing all of his junior accomplishments from age 7 to 17 and photographs of several junior level trophies. In 1985, the petitioner was listed as one of the top three junior golfers for the Junior All-America Team by *Golf*. These awards end in 1988, 18 years before the petition was filed.

The record also includes several photographs of other trophies and plaques. The legible photographs demonstrate the following awards:

1. The 1990 South East Asia Amateur Golf Team Championship Putra Cup presented by the Singapore Golf Association,
2. Champion of the 1990 Sun Devil Thunderbird Invitational, a collegiate event,
3. Medal of unknown rank in the 1990 Asian Games,
4. Sixth and Seventh Place finishes at the Men's Golf All Conference of the Western Athletic Conference in 1991 and 1992,
5. Bronze medal in the Asian Games in Beijing in January 1991,
6. Winner of the 1994 Pro Division at the [REDACTED] Cup Matches in Hawaii and
7. Pro-Am Winner at the Volvo Masters in Malaysia on August 9, 2000.

Finally, counsel asserts that the petitioner's scholarship to attend [REDACTED] University serves to meet this criterion. [REDACTED] Head Golf Coach at [REDACTED] University, confirms that the petitioner attended the school on a golf scholarship. We are not persuaded, however, that a scholarship is an award or prize.

The record contains no evidence of nationally or internationally recognized prizes or awards after August 2000, nearly six years before the petition was filed. Moreover, in the 15 years prior to the filing of the petition, the petitioner won only two awards. The record contains no evidence regarding the

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

significance of the Pro-Am tournament at the Volvo Masters in Malaysia or the Pro Division of the Jack Nicklaus Cup in Hawaii. Significantly, the record contains no press coverage of either event. We note that the 2003 article submitted in response to the director's request for additional evidence states that the petitioner was still pursuing a "breakthrough victory." Even if we concluded that the Volvo Masters or the [REDACTED] Cup is a lesser nationally or internationally recognized award, the record still lacks evidence of any prizes or awards after August 9, 2000. Thus, the evidence submitted to meet this criterion is not indicative of or consistent with national or international acclaim as of the filing date in this matter, April 26, 2006.

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 response to the director's request for additional evidence, counsel asserted that the following memberships serve to meet this criterion:

1. The National Golf Association of the Philippines,
2. The Touring Professional Golfers' Association of the Philippines (TPGAP),
3. The Asian Professional Golfer's Association (PGA) and
4. Division 1 National Collegiate Athletic Association (NCAA) Golf Team.

The petitioner submitted his membership card for the Asian PGA and materials about the association. The materials, however, do not provide any information about membership in the association. [REDACTED] Secretary General of TPGAP, confirms that the petitioner has been a member since 1994. While [REDACTED] asserts that the petitioner is one of their top professionals, he does not provide the official requirements for membership in TPGAP.

In response to the director's request for additional evidence, counsel asserted that the above associations only admit the top golfers. On appeal, counsel asserts that membership in these associations is "similar or equivalent" to selection for an Olympic team. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without additional information from the associations themselves, the petitioner cannot establish that these memberships signify anything other than his eligibility to play either professional or collegiate golf.

The supplementary information at 56 Fed. Reg. 60899 (Nov. 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the “extraordinary ability” standard. . . . A blanket rule for all major league athletes would contravene Congress’ intent to reserve this category to “that small percentage of individuals who have risen to the very top of their field of endeavor.”

Thus, merely being eligible to play professionally is not evidence of eligibility for the exclusive classification sought.

The record also contains letters from [REDACTED] Executive Officer of the National Golf Association of the Philippines, certifying that the petitioner “has been many times a member of the Philippine National Golf Team which represented the Philippines in different international competitions like the World Amateur Team Championships (Eisenhower Cup), Asian Games, APGA Amateur Golf Team Championships (Nomura Cup), SEA Games and Southeast Asia Amateur Golf Team Championships (Putra Cup).” The attached profile, however, certified by [REDACTED] lists no national teams after 1992.

In light of the above, the evidence submitted to meet this criterion is not indicative of or consistent with *sustained* national or international acclaim.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted English language Filipino newspaper and magazine articles from 1981 through 1988. The petitioner also submitted foreign language articles from unknown publications on unknown dates. Foreign language published material must be accompanied by complete certified translations. 8 C.F.R. § 103.2(b)(3); 8 C.F.R. § 204.5(h)(3)(iii). As such translations are not part of the record, we will not consider these materials. The petitioner also submitted references to himself in 1998 through 1990 [REDACTED] University publications (where the petitioner was a student at the time) and a May 1990 issue of the *Utah County Journal*.

While some of the Filipino articles are about tournaments and mention the petitioner only in the context of providing the results of the tournament, many of the 1980’s Filipino articles are about the petitioner himself. All of these articles, however, predate the petition by 18 years.

In response to the director’s request for additional evidence, the petitioner submitted a June 23, 2006 article in *The Record*, a newspaper that serves Central Valley in California where the petitioner is now residing. The article is clearly about the petitioner and his move to California from the Philippines to train with [REDACTED]. Nevertheless, the article postdates the filing of the petition and cannot be considered evidence of his eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, the petitioner did not submit any evidence that this local publication can be considered major media in the United States.

The petitioner also submitted a July 14, 2006 article in *The Manila Times* about [REDACTED]. The article includes the sentence: “Curiously, [REDACTED] will be up against players of Filipino lineage in their bid to give Team Philippines its first twin-kill since [REDACTED] and [REDACTED] now professionals, won the boys class A and Class B titles in 1985.” This article is not “about” the petitioner. Moreover, the article also postdates the filing of the petition and cannot establish the petitioner’s eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner also submitted an undated article posted on the Asia Professional Golfers Association’s website. This article is about the Filipino Junior Golf Foundation, JUNGOLF. The petitioner is named as one of the professional golfers to come out of JUNGOLF, but the article is clearly not “about” the petitioner.

Finally, the petitioner submitted a 2003 article on the Inquirer News Services’ website. The article is about [REDACTED] and mentions his friendship in college with the petitioner. Significantly, while the article notes that the petitioner was ranked higher than [REDACTED] in college, the petitioner is quoted as saying, “We have changed positions now . . . I can only doff my hat to him.” The article further acknowledges that the petitioner has turned professional “and continues to pound the Asian golf scene – in search of a breakthrough victory.”

The director concluded that the published material appeared in newspapers, not “professional” publications. On appeal, counsel asserts that newspapers are major media and notes that the petitioner was also covered in magazines.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) does not require published material in professional media. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) relating to the outstanding research classification pursuant to section 203(b)(1)(B) of the Act. Rather, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material in professional *or* major trade publications *or other major media*. We find that nationally circulated newspapers can constitute major media and, thus, serve to meet this criterion.

Nevertheless, the materials submitted to meet this criterion are insufficient. As stated above, the only published material about the petitioner in Filipino publications predates the filing of the petition by 18 years. The petitioner has not demonstrated that the [REDACTED] University materials are nationally circulated beyond parents, students and alumni of that university. Similarly, the record contains no circulation data for the *Utah County Journal* or other evidence indicating that the publication is major media in the United States. Moreover, even these materials predate the petition by 16 years. The more recent materials cannot be reasonably characterized as “about” the petitioner as required under 8 C.F.R. § 204.5(h)(3)(iii).

In light of the above, the petitioner has not met this criterion with evidence indicative of *sustained* national or international acclaim.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a golfer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a golfer and gained some earlier recognition for his junior achievements, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.