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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date: MAY 01 2008
EAC 06 101 50535

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also found the petitioner had not established that she is one of that small percentage who have risen to the very top of her field of endeavor.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Specifically, counsel asserts that the evidence of record satisfies the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), and (v). Counsel also argues that the director failed to consider comparable evidence of the petitioner's extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

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, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on February 14, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a track and field athlete specializing in short distance running events. A January 3, 2006 letter of support from [REDACTED] Track Coach at Seton Hall University, New Jersey, states:

I have had the distinct pleasure of being the coach of [the petitioner] for two years at Seton Hall University. . . .

* * *

In 2002-03, [the petitioner] was a member of BIG EAST Academic All American team . . . finished second in the 500m (1:13). Captured first place finish in the 200m (24.44). At the ECAC [Eastern College Athletic Conference] championship captured first in the 500m (1:10) . . . Finished second in the 800m (2:11.17). Fourth in the 400m (53.64) at the Sea Ray Relays and shortly thereafter [the petitioner] ran a time of 53.18 qualifying her for the NCAA [National Collegiate Athletic Association] championships. [The petitioner] finished 9th in the 400m (53.33) at the NCAA championships.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). 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.

The petitioner submitted the following:

1. A certificate stating that the petitioner's Essex County College 4 x 800 meter relay team placed first at the National Junior College Athletic Association (NJCAA) Women's Championship Outdoor Track and Field Meet in 2000, setting a NJCAA record.
2. A certificate stating that the petitioner's Essex County College 4 x 800 meter relay team "was named to a first team position on the Women's All-American Division I Outdoor Track & Field Team of the NJCAA for the year 1999-2000."
3. A certificate stating that the petitioner's Essex County College 4 x 400 meter relay team "was named to a first team position on the Women's All-American Division I Outdoor Track & Field Team of the NJCAA for the year 1999-2000."
4. A photograph of five medals awarded to the petitioner at NJCAA athletic events.

5. A photograph of a trophy reflecting 4th place in the 1600 meter relay at the 2002 Division I Women's Indoor Track and Field Championships.
6. A photograph of a trophy reflecting 4th place at the 2002 Division I Women's Outdoor Track and Field Championships.
7. A photograph of a trophy from Seton Hall University naming the petitioner its "Junior Female Athlete of the Year" in track and field for 2001-2002.
8. Results showing that the petitioner won first place in the women's 400 meter run at the 2002 Eastern College Athletic Conference (ECAC) Division I Indoor Track and Field Championships.
9. A photograph of seven medals awarded to the petitioner at various collegiate athletic events (such as a Big East Conference medal and an ECAC medal).

The petitioner has not established that her certificates reflecting participation as a winning relay team member (items 1 through 3) and medals from the NJCAA (item 4) constitute nationally or internationally recognized prizes or awards for excellence in her sport. With regard to the petitioner's NJCAA awards, we cannot conclude that such awards limited by their terms to "junior college" athletes (rather than open to the entire field) are evidence that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.¹ Likewise, it does not follow that a runner who has had past success competing at the junior college level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

With regard to the photographs of the team trophies from the 2002 NCAA Division I events (items 5 and 6), we note that these 4th place trophies do not bear the names of the recipients. Further, the record includes no official competitive results for these events from the NCAA listing the names of the winning athletes. Nor has the petitioner established that placing as low as fourth in these team events constitutes her receipt of nationally or internationally recognized prizes or awards for excellence in her sport. Finally, we cannot conclude that victories in competitions restricted to college athletes are evidence that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

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

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

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

