

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

FILE:



Office: TEXAS SERVICE CENTER

Date: **SEP 04 2008**

SRC 06 199 51361

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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner filed an appeal with the Administrative Appeals Office (AAO), which remanded the matter to the director for further action and consideration. The director again served the petitioner with a NOIR, and ultimately revoked the approval of the petition. The matter is now before the AAO on certification. The decision of the director will be withdrawn and the petition will be approved.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The petitioner, a competitive swimmer who won an Olympic bronze medal in 2000, 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). In the first NOR, 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 determined the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

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 the 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).

On April 3, 2008, the AAO withdrew the director's decision and remanded the petition for further action and consideration. In its decision, the AAO found that the petitioner's Olympic bronze medal in 2000 satisfied the one-time achievement necessary to establish the required national or international acclaim as an athlete. 8 C.F.R. § 204.5(h)(3). The AAO also determined that the petitioner had submitted clear evidence establishing that he would continue to participate in competitive swimming at the national and international level. 8 C.F.R. § 204.5(h)(5). As the petitioner's evidence satisfied sections 203(b)(1)(A)(i) and (ii) of the Act, the director's bases of revocation were withdrawn. The remaining issue in contention is whether the petitioner has established that he will substantially benefit prospectively the United States.

A September 14, 2007 letter from Technical Director, Brazilian Swimming Federation, states:

[The petitioner] has been training in the U.S. since 1999 and has competed for Brazil and this federation whenever needed. He has been a member and important asset for the Brazilian National Swimming team for the past two Olympic Games. He will be competing again at Brazilian Nationals in May 2008. He has individual standard times (100/200 Freestyle) that would ensure him a place on the team in future events.

At last, [the petitioner] has expectations and performance responsibilities by his home team in his country. We strongly believe and count on [the petitioner's] participation in the Team that will participate in the 2008 Olympic Games in Beijing, China.

The AAO's decision instructed the director to "inquire as to how the petitioner will substantially benefit prospectively the United States by training for a foreign national team." On April 16, 2008, the director

issued a NOIR requesting evidence establishing that the petitioner satisfies section 203(b)(1)(A)(iii) of the Act.

In response, the petitioner submitted a May 16, 2008 letter from [REDACTED], Senior Swimming Coach, Pine Crest School, Ft. Lauderdale, Florida, stating that the petitioner was training with the Pine Crest Swim Club in preparation for international swim meets in Europe, the 2008 U.S. Open, and the 2008 Summer Olympic Games in Beijing. The petitioner also submitted a May 14, 2008 letter discussing his plans for competing in international swimming events such as the Olympics and expressing his intention to swim for the United States in the future. We find that the preceding evidence is adequate to establish that the petitioner will substantially benefit prospectively the United States.¹ The director, however, issued a second NOR finding that the petitioner had not met the requirements of section 203(b)(1)(A)(iii) of the Act.

On certification, counsel argues that the petitioner's competitive achievements at the international level, his ongoing training, and his declaration to swim for the United States upon becoming a resident and citizen of the United States demonstrate that he meets the statutory requirements for an alien of extraordinary ability.² We concur. The petitioner's accomplishments as a competitive swimmer demonstrate that he has sustained national and international acclaim at the very top of his field. The petitioner has also established that he will continue competing nationally and internationally at the very top level of his sport and that he will substantially benefit prospectively the United States. Therefore, the petitioner has overcome the stated grounds for revocation and thereby established eligibility for immigrant classification under section 203(b)(1)(A) of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452 n.1; *Matter of Ho*, 19 I&N Dec. at 589. Here, the petitioner has sustained that burden.

ORDER: The director's May 23, 2008 decision revoking approval of the petition is withdrawn and the petition is approved.

¹ In this case, the petitioner's past athletic achievements (such as his Olympic medal), the level of his upcoming competitions, and the statement expressing his intention to swim for the United States justify projections of future benefit to the United States. For example, there is no indication that the petitioner's competitive swimming career is behind him and that he no longer participates in national or international competition at the very top level.

² On August 21, 2008, the petitioner submitted a supplemental brief from counsel. While the regulation at 8 C.F.R. § 103.3(a)(2)(vii) gives the AAO the discretion to allow the affected party additional time to submit an appellate brief under certain circumstances, there is no regulatory provision at 8 C.F.R. § 103.4 that permits additional time in which to file a brief on certification. The 30-day period permitted under 8 C.F.R. § 103.4(a)(2) expired on June 23, 2008. Accordingly, the AAO will not consider the supplemental brief in this proceeding.