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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
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U.S. Citizenship
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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: APR 30 2009
LIN 07 024 51447

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:

[Redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

JF Grissom
John F. Grissom
Acting 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 that the record did not establish that the petitioner had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. The director also found the petitioner had not established that he is one of that small percentage who have risen to the very top of his field of endeavor.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 October 30, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a runner. Initially and in response to the Request for Evidence ("RFE") dated December 10, 2007, the petitioner submitted news articles, award certificates, one letter of recommendation, and race results.

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 a such an award, the regulation at 8 C.F.R. § 204.5(h)(3) 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.¹

(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 evidence of the petitioner’s participation in the 2000, 2001, and 2002 NCAA Division II Men’s Cross Country Championships, the 2000 and 2002 Division II Men’s Outdoor Track and Field Championships, and the 2000 and 2001 Division II Men’s Indoor Track and Field Championships, as well as evidence that he was selected for the All-American cross country team by the United States Track Coaches Association in 2000, 2001, and 2002, the All-Region Intercollegiate cross country team for 2000, 2001, and 2002, and the All-Conference cross country team in 2000, 2001, and 2002. Certificates of participation are not awards or prizes, but instead amount to recognition of the petitioner’s involvement in the event. Similarly, selection for a team is not considered to be a prize or award.

The petitioner also submitted evidence of his first place finish in the 800 meter and 1500 meter races at the 2001 NCAA National Championship, first place in the 1500 meter race, first place in the 800 meter race, and second place in the 400 meter race held by the Kenya Teachers’ Colleges Sports Association, Rift Valley Zone in 1998; first place in the 1500 meter race, first place in the 4x400 meter relay race, second place in the 400 meter race of the Inter-Collegiate Athletics Championship in 1998, and first place finish in the 800 meter and mile races at the 2001 and 2002 NCAA Indoor Championship. However, as these awards were given as a result of collegiate competition they do not convey the requisite national or international acclaim required for this highly exclusive classification. A collegiate competition is, by its very nature, restrictive in those eligible to participate in the event. An event restricted to students cannot constitute an award for excellence in the field as it did not allow those working in the field, i.e. professional runners, to participate. Counsel states that the petitioner competed against Olympic runners at the collegiate events and concludes that as Olympic runners competed, the awards given in these events “represent the highest levels of recognition.” Even though some Olympic runners may have competed in certain collegiate events in which the petitioner also participated, the events themselves were not open to all runners of every age so that the overall quality of competition is presumably less than in an open event. USCIS 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. at 953, 954; 56 Fed. Reg. at 60899. The petitioner presented no evidence that a win in an event limited to college students is indicative of the acclaim required for this classification. To find otherwise would contravene the meaning of the statute regardless of whether Olympic athletes also competed in these collegiate events.

¹ Only those criteria claimed to be applicable by the petitioner will be discussed, because neither the petitioner nor counsel claim to meet any of the remaining criteria and the record contains no evidence relevant to those criteria.

Counsel stated in the response to the RFE that the petitioner achieved a ranking of 8 in Kenya in 1998 and had the 15th best time for the mile in 2001, however, counsel submits only a letter from ██████████ to support his statement. ██████████ wrote that the petitioner achieved the 15th best time for the mile in 2001 but did not state how he learned of this ranking nor how a ranking is a prize or award or that it conveys national or international acclaim. In addition, his statement does not support counsel's statement about the petitioner's ranking within Kenya.

Even if these awards constituted lesser nationally or internationally recognized prizes or awards under this criterion, the petitioner presented no evidence that he competed after 2002. In the appellate brief, counsel stated that the petitioner has not competed after 2002 because of eligibility issues in the United States in that national level competitions require that the athletes be permanent residents or citizens in order to compete. Although the submitted material from USA Track & Field supports counsel's contention, the reason that the petitioner has not competed in the four years prior to the filing of the petition is irrelevant. We note that the petitioner limited himself to United States competitions in his statements that he was unable to compete and does not demonstrate that he could not have competed in events either in his native Kenya or elsewhere in the world even if precluded from competing in the United States. An alien must demonstrate sustained acclaim in his field of endeavor, so failing to compete for four years means that the petitioner fails to meet this threshold determination.

Accordingly, the petitioner has not established eligibility under this criterion.

(ii) 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, a 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, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In the initial submission, the petitioner claims eligibility under this criterion by virtue of being a part of the All-American Track and Field Team as decided by the United States Track Coaches Association and the All-Region and All-Conference Intercollegiate Men's Cross Country Team. The petitioner submitted no evidence as to the criteria used in determining All-American, All-Region, or All-Conference status so as to demonstrate that being named to those teams is predicated upon outstanding achievement. In addition, the petitioner submitted no evidence that any organization or association of All-American, All-Regional, or All-Conference athletes exists. Instead, the petitioner's selection and participation on these teams is more relevant to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) and, as such, will be discussed under that criterion.

For all of the above reasons, the petitioner has not established eligibility under this criterion.

(iii) 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.

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. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted only one article primarily about him: “[REDACTED] gives his all in running, family and spiritual life” that he identified as being published in the *Optimist*. The other articles are about either the Abilene Christian University track team as a whole or about all of the runners who participated in a particular meet. For example, the article entitled “Wildcats rule again” starts with a discussion of the petitioner’s will to win, however, the rest of the article is about the results of the NCAA Division 2 track meet, naming other athletes and publishing results for races other than those in which the petitioner participated. Many of what the petitioner identifies as news articles are actually race results published in a variety of sources. Mere mention of the petitioner’s name in an article does not make the article “about” the petitioner. These race results are not published material about the petitioner as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii), but are instead a list of top finishers and times for an event.

Even if the articles submitted were primarily about the petitioner, all of the publications, with the exception of the *Boston Globe* and *Track & Field*, do not amount to major media. The petitioner submitted copies of articles that appear in the Abilene Christian University publication and on the University’s website; the NCAA sports website; the *Abilene Reporter-News*; the *East African Standard*; and the *Optimist*. We note that the petitioner submitted information about these publications from the website *Wikipedia*. However, there are no assurances about the reliability of the content from *Wikipedia* as an open, user-edited internet site.² As such, we will not give significant weight to claims for which *Wikipedia* is the only cited source. The petitioner also submitted a number of news articles whose sources are not identified on the submission. Counsel lists these articles and their purported sources, however, assertions of counsel are not evidence and even taking counsel’s claims as accurate, these sources do not amount to major media. See *Matter of Obaigbena*, 19 I. & N. Dec. at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506.

² Online content from *Wikipedia* is subject to the following general disclaimer:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See <http://en.wikipedia.org/wiki/Wikipedia:Disclaimers>, accessed on March 9, 2009.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

In the initial submission, counsel claims that the petitioner meets this criterion “by participating in this sport at all levels and competing fiercely and winning numerous titles and championships.” This argument means that the awards previously considered under 8 C.F.R. § 204.5(h)(3)(i) would also qualify as contributions of major significance within the field under 8 C.F.R. § 204.5(h)(3)(v). 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. Counsel continued by saying that “athletes of [the petitioner’s] caliber and experience are needed to further develop and promote this sport the United States [sic], thereby inspiring and producing top World-Ranked American runners” and that track and field events are easily organized to help reduce obesity, cardiovascular disease, and other sedentary problems. The petitioner presented no evidence to show that he is either working to develop and promote the sport within the United States or that he has worked to improve the mobility of the American populace so as to reduce the problems of a sedentary lifestyle. Without documentary evidence to support his claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

Accordingly, the petitioner failed to demonstrate eligibility under 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 asserts eligibility under this criterion by virtue of his participation as a member of the Abilene Christian University track team, which included being team captain in 2001 and 2002. While the petitioner may be eligible for this criterion by virtue of his role as captain of this team, we do reach such a finding given the petitioner’s failure to demonstrate that the Abilene Christian University track team enjoys a distinguished reputation. Counsel states that Abilene Christian University “is nationally ranked for its outstanding athletic programs.” In support of these assertions, the petitioner submitted an excerpt from the Abilene Christian University website that states that the University has an “internationally recognized track and field program has produced world-record holders, more than 20 Olympians, several hundred All-America performers and two Olympic gold medalists.” Information generated by the organization or establishment itself is insufficient to establish its reputation among the community as a whole.

In addition, while the petitioner also submitted evidence regarding his selection and participation on All-American, All-Regional, and All-Conference teams, the record contains no evidence demonstrating how the petitioner’s role differentiated him from the others on the teams. Therefore, the documentation submitted by the petitioner does not establish that he was responsible for the success of the teams, their standing, or otherwise demonstrate that his role on the teams was consistent with the meaning of “leading or critical role.”

Accordingly, the petitioner has failed to establish that he meets 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 record in this case does not establish that the petitioner achieved sustained national or international acclaim as a runner 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).

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 section 203(b) of the Act, 8 U.S.C. § 1153(b).

ORDER: The appeal is dismissed.