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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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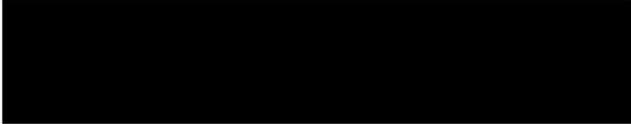
Office: TEXAS SERVICE CENTER Date: **AUG 25 2009**

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)

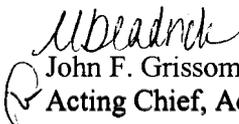
ON BEHALF OF PETITIONER:



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.

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).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel for the petitioner argues that the petitioner meets the statutory requirements and at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-9 (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 has 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 January 16, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a marathon runner. 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 of the criteria outlined in 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 that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

In his November 23, 2007 letter in support of the petition, counsel provided a list of events in which the petitioner allegedly competed from May 2003 to November 2007. The results indicated that the petitioner placed as high as 1st place to 35th place. Not all of the events were marathons. Counsel also indicated that the petitioner's awards included the 2004, 2005 and 2006 New York Marathons, in which she placed 7th, 3rd, and 3rd, respectively. Counsel also stated that in the same races, the petitioner placed 27th, 16th and 18th in the "Elite" category.

The petitioner provided copies of what counsel asserted were awards that the petitioner had received in various events, including the National Sport Games of Ukraine, the Olympic Day Run, the Marathon of the National Sport Games of Ukraine, and the National Marathon of Ukraine. However, all of the translations accompanying these documents were provided by counsel. Although counsel certifies that the documents are complete and accurate as required by 8 C.F.R. § 103.2(b)(3), the translations are summaries of the accompanying documents and therefore do not comply with the regulation, which provides that "[a]ny document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation." Because counsel failed to provide a full translation as required by the regulation, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the

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

evidence is not probative and will not be accorded any weight in this proceeding. Further, the documentation submitted is insufficient to establish that awards or prizes presented at any of these events are nationally or internationally recognized as awards or prizes of excellence in the petitioner's field.

The petitioner also submitted copies of the results of several races in which she had competed, including the 2004, 2005, 2006 and 2007 New York City Marathons. The petitioner did not win any of these races and, despite counsel's assertions that the petitioner had third place finishes, the record does not demonstrate that the petitioner placed any higher than 16th in the female category. The petitioner submitted no documentation to establish that such performances are consistent with a national or international award or prize of excellence in her field. Further, of the races that she won, such as the Liberty Waterfront Half-Marathon, the petitioner submitted no documentation to establish that placing first in any of these competitions is nationally or internationally recognized as a prize or award of excellence in her field of endeavor.

The petitioner submitted a copy of what counsel stated is a "master of sports certification," signed by the Deputy Minister of Sports on April 3, 2007. We note again that the translation accompanying the document was provided by counsel and appears to only be a partial translation. The petitioner submitted documentation from the online encyclopedia *Wikipedia* that the "Master of Sports of the USSR . . . equates to national champion." With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

In response to the director's request for additional evidence (RFE) dated April 8, 2008, the petitioner submitted photographs of several medals, trophies and other awards that she stated she had won. As noted by the director, these awards do not identify the name of the individual receiving them.

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

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. 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. [Emphasis in original.]

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 4, 2009, a copy of which is incorporated into the record of proceeding.

The petitioner also submitted documentation from *Wikipedia* that identifies the five “largest and most prestigious races [as] Boston, New York City, Chicago, London, and Berlin.” As discussed above, information citing only *Wikipedia* as its source will not be accorded any weight in this proceeding. Further, with the exception of New York Marathon, the petitioner submitted no documentation that she competed in any of these races. The petitioner submitted no documentation to establish that the Bermuda marathons, the Cinco de Mayo 5k run, the Newark, NJ run, the New York City Parks Run, or any of the other races that counsel describes as “world class races” award prizes or awards that are nationally or internationally recognized as prizes or awards of excellence in the petitioner’s field.

On appeal, counsel asserts that the petitioner won national prizes and awards in Ukraine, including winning second place in the National Summer Sport Games and second place in the Championship of Ukraine Marathon. The petitioner resubmitted the copy of what counsel alleges is an award given to the petitioner for winning second place in the National Sport Games of Ukraine. However, as discussed above, the translation accompanying the document, in addition to being translated by counsel, is a summary. Summary translations do not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which provides that documents in a foreign language must be accompanied by full English translations. The petitioner also resubmitted a copy of a September 30, 2003 certificate from the International Olympic Committee for her participation in the Olympic Day Run. However, the certificate does not indicate the petitioner’s results in the race. A certificate acknowledging the petitioner’s participation and “high results” is not evidence that she received an award or prize.

On appeal, the petitioner also submits a copy of the results of the “Championship of Ukraine in marathon” in September 2003. The document indicates that the petitioner finished second in the female category and second in the female team results. The certificate acknowledging the “award” presented to the petitioner, as discussed previously, is a summary of the document translated by counsel. As such, the document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3). It is not clear whether the petitioner actually received an award or a certificate acknowledging her results. Further, even if it been adequately documented, we do not find that winning a single nationally recognized award is consistent with sustained national or international acclaim or with this criterion, which requires receipt of prizes or awards.

The petitioner has failed to establish that she meets this criterion.

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.

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 work experience, 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submitted a November 1, 2007 letter from the Warren Street Social and Athletic Club (WSSAC) in which its president, [REDACTED], stated that the petitioner was a top runner for the club. In a December 6, 2007 letter, [REDACTED] of the Bermuda Track and Field Association, stated that the petitioner was a member of the Soviet Long Distance Running Team and "symbolized" the team from 2005 through 2007.

In his RFE, the petitioner instructed the petitioner to provide the "minimum requirements and criteria" for membership in the associations in which the petitioner claimed membership. The petitioner submitted no additional documentation in support of this criterion in response to the RFE or on appeal. On appeal, counsel concedes that the petitioner does not belong to any club that requires outstanding achievements of its members, stating that no such clubs exist in the petitioner's field of expertise. We concur that membership in regional associations such as the WSSAC is not sufficient to meet this criterion. Further, the record contains no supporting documentary evidence to support [REDACTED] claims regarding the petitioner's membership on the Soviet Long Distance Running Team. Accordingly, the petitioner has failed to establish that she meets this criterion.

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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as *The New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of an article from the website fast-women.com, accessed by the petitioner on October 19, 2007. The article, posted on March 24, 2006, is an interview of the petitioner and one of her running partners who, according to the article, served as the petitioner's interpreter. The document indicates that the website is "A New York Road Runners Web Site." Other documentation submitted by the petitioner, such as in *The Royal Gazette* and *The San Diego Union Tribune*, contain photographs of the petitioner during the course of the race or mention her only in the context of her race results. As this criterion specifically requires an author, title, and translation, the publication of photographs do not qualify the petitioner under this criterion. Those specific requirements reference published written work instead of visual work. As such, these published photographs do not qualify the petitioner under this criterion.

On appeal, counsel asserts that “other professional websites” that wrote about the petitioner included the New York City Marathon website, the New York Road Runners website, *Runner* magazine and *This Running Town*. In today’s world, many news articles and printed materials, regardless of size and distribution, are posted on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. We are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is “major media.” The petitioner must still provide evidence, such as, a widespread distribution, readership, or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or major media in order for us to credit these articles. The petitioner has not established that any of these websites constitute major media. Moreover, we note that photographs of the petitioner taken during her participation in various events are not considered published material. As this criterion specifically requires an author, title, and translation, the publication of photographs do not qualify the petitioner under this criterion.

The petitioner has failed to establish that she 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 alleges for the first time on appeal that she meets this criterion based on her membership in the WSSAC which has already been discussed under 8 C.F.R. § 204.5(h)(ii). We note that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for membership, USCIS 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. Regardless, the petitioner has failed to establish that her membership in the WSSAC is sufficient to meet this criterion.

The petitioner submits the history of the club from its website, an October 2, 2008 letter from its president, [REDACTED], an October 8, 2008 letter from [REDACTED], a copy of an article from the Winter 2007 edition of *This Running Town* about the WSSAC and [REDACTED], a document from the New York Road Runners organization website listing the WSSAC as a national and international running club, and additional information about the petitioner’s competitions.

In his April 8, 2008 RFE, the director advised the petitioner that:

If the evidence includes the performance of leading or critical roles for organizations that have a distinguished reputation, submit evidence of the organization’s reputation and more detailed description of the role you play[ed] in that organization.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further

information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Even if considered, the record lacks evidence to establish that as a member of a local running organization, the petitioner has performed in a leading or critical role for the organization and that the organization has a distinguished reputation. Accordingly, the petitioner failed to establish that she meets this criterion.

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 her field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her 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.