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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER  
LIN 07 070 51787

Date: JUN 25 2009

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.

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, 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 required for 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 or that he will provide a substantial benefit to the United States.

On appeal, counsel asserts that the petitioner meets 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:

(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 he has sustained national or international acclaim at the very top level.

This petition, filed on January 8, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a figure skater. Initially, the petitioner submitted information about the International Skating Union ("ISU") and Bulgarian Skating Federation ("BSF"), awards won, letters of recommendation, and information about his educational accomplishments. In response to the February 12, 2008 Request for Evidence ("RFE"), the

petitioner submitted evidence of his membership in BSF, additional information about the ISU, and additional letters of recommendation. On appeal, the petitioner submitted additional letters of recommendation and a letter from the Council of Ministers State Agency for Youth and Sports about the petitioner's past achievements.

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). We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria under 8 C.F.R. § 204.5(h)(3) relevant to the petitioner's case. The petitioner does not claim and the record does not establish the petitioner's eligibility under any criteria not addressed below.

*(i) 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 evidence that he won 3<sup>rd</sup> place in category II of the 2000 Bulgarian National Competition "Prize Victoria," 4<sup>th</sup> place in the 2001 Yugoslav Cup "Helena Pajovic," 1<sup>st</sup> place in category II of the 2003 Bulgarian National Competition "Prize Victoria," 16<sup>th</sup> place in the 2003 ISU Junior Grand Prix of Figure Skating Series, 15<sup>th</sup> place in the 2003 Croatia Cup (including 12<sup>th</sup> place in the short program), 1<sup>st</sup> place in category II of the 2003 Bulgarian National Tournament, 1<sup>st</sup> place in category II at the 2004 Bulgarian National Championship of Figure Skating, 2<sup>nd</sup> place in category II at the 2004 Bulgarian National Competition "Prize Victoria," 4<sup>th</sup> place in the 2004 ISU Junior Grand Prix of Figure Skating Series, 1<sup>st</sup> place in category II of the 2005 Bulgarian National Tournament, 20<sup>th</sup> place at the 2005 Junior ISU JPG Sofia Cup, 1<sup>st</sup> place in category II of the 2005 Bulgarian National Competition "Prize Victoria," and 2<sup>nd</sup> place in category II of the 2006 Bulgarian National Championships.

The petitioner also submitted certificates of participation from the 2004 World Junior Figure Skating Championship and 2005/2006 ISU Junior Grand Prix of Figure Skating. Certifications of participation do not amount to prizes or awards.

Although documentation of the petitioner's receipt of these various awards appears in the record, these competitions all appear to be limited to "junior" participants. The petitioner presented no evidence to show how, if a competition is restricted to competitors in terms of age or experience, the award would constitute an award for excellence in the field if it did not allow competition among all participants in the field. 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. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>1</sup>

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

Therefore, it does not follow that a competitor like the petitioner who has success in competitions limited by his age or experience should necessarily qualify for an extraordinary ability employment-based immigrant visa. On appeal, counsel argues that the awards were given by the ISU, which “is the most prestigious skating organization in the world.” The reputation of the awarding organization is not necessarily indicative of the recognition given to a specific award from a particular competition overseen by that organization. The burden is on the petitioner to show that winning awards at these contests conveys national or international recognition, however, no evidence appears in the record evidencing such acclaim. As noted above, while we do not dispute the reputation of the ISU, the fact remains that the petitioner’s awards were at a level limited by his junior status and therefore not indicative of qualification for this category.

The same analysis also applies to the BSF competitions in which the petitioner received awards in category II. The petitioner provides no evidence explaining who is eligible to compete under category II, which took place during the same time period in which the petitioner was competing in other “junior” competitions. The letter from the Bulgarian Council of Ministers states that the petitioner won medals in “a National Championship,” but the petitioner submitted no evidence that this tournament conveys the Bulgarian national champion title or otherwise conveys national or international acclaim upon the recipient. The ISU record submitted reflects that the petitioner won 4<sup>th</sup> place in 2004 and 2005 and 3<sup>rd</sup> place in 2006 at the Bulgarian national championships. The petitioner submitted no evidence that such placement conveys national or international acclaim or that it conveyed the national title. We note that the ISU record seems to relay the petitioner’s receipt of junior titles.

In light of the above, the petitioner has not established that he meets 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.

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[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 USCIS’s interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

We acknowledge that membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive. The letter from the Bulgarian Council of Ministers vaguely states that the petitioner was "accepted in the National team for juveniles and youths" on an unidentified date. This letter indicates that only younger, less experienced athletes will qualify for the team rather than the team being open to all of those participating in the field, including those at the very top of the field. As previously indicated, 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. As such, the petitioner cannot establish that he meets this criterion based on his membership in the BSF or the Bulgarian national team as a junior athlete as such membership is not indicative of the acclaim required by this highly restrictive immigrant classification.

The petitioner also presented evidence that he is a member of the skating club "Slavia." The petitioner, however, submitted no evidence such as membership qualifications for this organization to establish that outstanding achievements are prerequisites to membership or that membership applications are judged by recognized experts in the field. Counsel states that as the BSF is affiliated with the ISU and bound by its rules and regulations, it requires outstanding achievement of its members. The ISU Constitution sets forth the requirements for member bodies (each country may have only one member as recognized by the national Olympic committee of that nation and that member must control either figure skating, speed skating, or both and must conduct regular national championships), but contains no requirements for skaters affiliated with the member bodies. Counsel also claimed that the petitioner was eligible under this criterion by virtue of his membership in the ISU. Counsel argued that the petitioner held membership in the ISU through his membership in the BSF as the BSF is a member organization of the ISU. The petitioner's eligibility based on membership in the BSF is discussed above. The ISU Constitution contains no provision providing for individual membership in the organization. As such, the petitioner failed to show membership in the ISU and also failed to show that membership in the ISU is predicated upon outstanding achievement.

For all of the above reasons, the petitioner failed to establish that he meets 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 generally 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.<sup>2</sup>

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<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

In response to the RFE, counsel stated that the petitioner demonstrated eligibility under this criterion through his appearance on Wikipedia and on the ISU “Crystal Report Viewer.” Counsel further stated that “skating is rarely covered in the media[, t]hus any mention of skaters in the media is extraordinary.” The director found that the “brief biographies [found on these two websites] are not sufficient to satisfy this criterion. Further, the Service is not persuaded, nor does the record establish, that the sources identified can be considered commensurate with major media.” Counsel on appeal does not dispute this finding. Upon review, we concur with the director. With regard to the information posted on *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>3</sup> In addition, the petitioner provided no information about the nature of Wikipedia as a publication so as to show that it amounts to a professional or major trade publication or other major media. The excerpt from the “Crystal Report Viewer” is not an article, but is instead an official record of the petitioner’s accomplishments as kept by the regulating body. To this end, the petitioner submitted no information regarding the “Crystal Report Viewer” such as circulation statistics or other information indicating that it is a professional or major trade publication or other major media.

In light of the above, the petitioner has not established that he meets this criterion.

*(vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.*

Although the petitioner claimed that this criterion applied, without elaboration, at the time of filing, no discussion appears in the director’s decision. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, counsel claims that the petitioner meets this criterion because “a figure skater displays his art for an audience.” In support of this assertion, counsel cites an unpublished decision of the AAO involving a cellist. Pursuant to 8 C.F.R. § 103.4(c), designated and published decisions of the AAO are binding precedent on all Service employees in the administration of the Act. However, unpublished decisions have no such precedential value. In that decision, we noted that even if we were to accept the programs from performances as comparable

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<sup>3</sup> 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 April 20, 2009 (and added to the record of proceeding).

evidence under the regulation at 8 C.F.R. § 204.5(h)(4), that the evidence provided was insufficient to demonstrate the cellist's eligibility under this criterion. Much like the petitioner in this case, the cellist was "not listed as a principal or featured soloist" nor did the cellist or this petitioner submit "evidence that any of these performances won critical acclaim or media coverage indicative of . . . sustained national or international acclaim."

As counsel acknowledges, the plain language of this criterion reveals that it relates to the visual arts, such as sculptors and painters, rather than to figure skating competitions or performances. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's participation and success in figure skating contests has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" his work in the sense of competing in front of an audience. Although figure skating includes an artistic element, it requires athletic prowess and skill. Other athletic pursuits such as gymnastics also contain artistic elements, however, counsel has not shown how an athletic event which contains artistic elements amounts to a purely artistic endeavor such as sculpting or performing a musical piece on a cello. The petitioner has not established that his participation in competitions compares to the artistic showcases contemplated by the regulation for visual artists.

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

The director also determined that the petitioner failed to establish that the petitioner's admission will substantially benefit the United States as he intends to continue competing for Bulgaria. On appeal, the petitioner submitted a letter from [REDACTED] setting forth a schedule of figure skating events in which the petitioner intends to compete. This letter is sufficient to establish that the petitioner intends to continue working in his area of expertise. Neither that letter nor any other evidence in the record suggests, however, that the petitioner intends to compete as a member of the United States team. The record does not establish how the petitioner's intention to continue competing for Bulgaria will provide a substantial prospective benefit to the U.S. Counsel's brief on appeal states that admission of the petitioner benefits the United States insofar as it demonstrates that the United States is a welcoming training ground. The petitioner submits no evidence to show how his training in the United States will be publicized in such a way so as to benefit the United States. An athlete that competes for a country wears that country's uniform and is identifiable as a member of that country's team; an athlete's training grounds are not so readily advertised. As such, we agree with the director that the petitioner did not present evidence that his admission would convey a substantial prospective benefit for the United States.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.