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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

[Redacted]

DATE: JUL 30 2012 Office: NEBRASKA SERVICE CENTER [Redacted]

IN RE: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on February 14, 2011. The petitioner appealed the decision with the Administrative Appeals Office (AAO) on March 18, 2011. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” in the athletics, specifically, as a national team coach in biathlon, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the beneficiary’s sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The AAO disagrees.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the beneficiary’s “sustained national or international acclaim” and present “extensive documentation” of the beneficiary’s achievements. *See* section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel files a brief and the following documents: (1) a March 16, 2011 letter from [REDACTED] the [REDACTED] (2) a February 2000 document entitled “Summary Report: Evaluation of the Performance and Training of Community Olympic Development Program Athletes,” (3) a March 16, 2010 letter from [REDACTED] and (4) a March 16, 2011 letter from [REDACTED] the [REDACTED]. For the reasons discussed below, the AAO finds that the petitioner has established the beneficiary’s eligibility for the exclusive classification sought. Specifically, the AAO affirms the director’s finding that the petitioner meets at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3), and further concludes that, in the final merits determination, the petitioner has demonstrated that the beneficiary is one of the small percentage who are at the very top of the field and demonstrated the beneficiary’s sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO sustains the petitioner’s appeal.

I. LAW

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.

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, internationally recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of the evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Kazarian*, 596 F.3d at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the AAO finds that the petitioner has met at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), and in the final merits

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

determination, the petitioner has shown that the beneficiary is one of a small percentage who have risen to the very top of the field or that he has sustained national or international acclaim. *See* Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

II. ANALYSIS

A. Evidentiary Criteria

Based on the record, the AAO affirms the director's conclusion that the petitioner meets three criteria.

B. Final Merits Determination

Based on the evidence in the record, the AAO concludes that the petitioner has submitted the requisite evidence under at least three evidentiary categories. *See* 8 C.F.R. § 204.5(h)(3)(i)-(x). In accordance with the *Kazarian* opinion, the AAO will conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that [the beneficiary] is one of [a] small percentage who have risen to the very top of the field of endeavor," and (2) that the beneficiary "has sustained national or international acclaim and that his [] achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

Based on the evidence in the record and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), the AAO concludes that the petitioner has made the requisite showing. Specifically, according to [redacted] of the [redacted], the association hired the beneficiary as the head coach of a [redacted] where he trains internationally competitive athletes. [redacted] further stated that most of the athletes reside in Grand Rapids, MN, where they train with the beneficiary on a year-round basis. In addition, [redacted] stated that the athletes the beneficiary coaches have competed at the World Championships in 2004, 2006, 2008 to 2010, and obtained results ranging from a second place finish to a sixth place finish. In his April 10, 2010 letter, [redacted], an athlete, stated that in the nine years that he has trained with the beneficiary, the beneficiary has coached him "from being a mid-level high school skier, to a National champion [in the 15km Mass Start in 2010] and world-cup level Biathlete." He further stated that the beneficiary has worked with him as a senior athlete and helped him make the 2009-2010 U.S. World Cup Biathlon Team.

In his March 16, 2010 letter, the [redacted] confirmed the competitive success of the beneficiary's athletes at international competitions, and stated, "there's no question that [the beneficiary] is one [of] the very top coaches in his field." [redacted] further stated that [redacted] "is America's leading hope for a medal at the next Olympic Games and this would never have been possible without the five years of coaching he received from [the beneficiary.]" In his April 19, 2010 letter, [redacted] stated that the beneficiary "has helped [him] to realize [his] dreams as an athlete." [redacted] further stated that the beneficiary's "hard work, sharp eye, and no-nonsense approach" has helped him achieve competitive results that led to his nomination "to the highest level of

the U.S. National Team, A1 Team, for the upcoming 2010 training season.” Similarly, according to an August 17, 2006 letter from [REDACTED] U.S. Olympic Committee’s Sport Partnerships Associate Director, “[the petitioner] has the educational background and personal experience as a coach needed for the development of Olympic champions. His knowledge of biathlon is superior to other coaches in the United States.”

Accordingly, based on the evidence in the record, the AAO concludes that the petitioner has shown that the beneficiary is one of the small percentage who are at the very top of the field and demonstrated the beneficiary’s sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

III. CONCLUSION

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 have risen to the very top of his field of endeavor.

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, the petitioner has submitted evidence qualifying under three of the evidentiary criteria and established a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and “sustained national or international acclaim.” His achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203 of the Act.

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 been met.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.