U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] **Public Copy**

File: [redacted] Office: Nebraska Service Center Date: APR 13 2001

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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.

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.

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 Service 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 seeks to classify the petitioner as an alien with extraordinary ability as a professional ice hockey coach. Counsel states that the petitioner "is one of the elite members of the sport of hockey who has mastered both levels of the game, as a professional player and coach. Counsel briefly discusses the petitioner's accomplishments as a hockey player, but acknowledges that the petitioner, who was 40 years old at the time of filing,

has "finished his career" as a player. Therefore, we will concentrate on the petitioner's accomplishments as a coach because it is in this area that the petitioner intends to continue to work, as required by section 203(b)(1)(A)(ii) of the Act and the regulation at 8 C.F.R. 204.5(h)(5). While related, coaching and playing are different areas of expertise which require somewhat overlapping but nevertheless very distinct skills.

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, international recognized award). Counsel contends that the petitioner has won such an award "when he received the 'Coach of the Year' award from *The Hockey News*, the most prestigious trade journal in the field." A major omission from the record is any evidence from The Hockey News itself. A newspaper article describing the award indicates that the magazine named the petitioner "Minor League Pro Coach of the Year." Counsel's repeatedly and consistently omits the term "Minor League," every time counsel mentions this award, falsely implying that the petitioner was selected as the best coach overall. The newspaper article indicates that the petitioner was selected in a survey of "NHL scouts, minor-league media and THN staff."

The regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Examples of qualifying awards include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among individuals who do not work in the fields to which the awards pertain. Absent compelling evidence, we cannot find that the title "Minor League Pro Coach of the Year" enjoys immediate international recognition on a par with the almost universally-known awards described above. We note that, by its very nature, this award excludes the coaches of the National Hockey League ("NHL"), which is the major North American hockey league. Counsel does not explain how an award which, by definition, excludes the coaches of the top professional hockey teams can be the most significant award in professional hockey coaching.

Counsel asserts that the petitioner won the above honor because his team won the Turner Cup, which counsel deems "the 'Stanley Cup' of the International Hockey League." This very comparison is an indication that the Stanley Cup is considerably better-known than the minor-league Turner Cup.

Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league

> athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Given that one can accede to the major league level, and still not qualify as "extraordinary," an athlete or coach at the minor league level bears a heavy burden to establish that he or she is at the top of his field. We do not consider "minor league hockey" to represent a field of endeavor distinct from "major league hockey." It remains that even the very best minor league hockey coach has not risen to the level of major league coaching.

Barring the alien's receipt of a major international 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. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

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

Counsel observes that the petitioner was a member of Canada's 1980 Olympic Hockey Team, and played in the 1985 NHL All-Star Game. As noted above, the petitioner is no longer a competitive athlete.

Regarding the petitioner's achievements as a coach, counsel again cites the petitioner's so-called "Coach of the Year" award (actually the "Minor League Pro Coach of the Year" award), and observes that the petitioner led the Peoria Rivermen to division titles and conference titles in 1994 and 1995, and the Turner Cup championship in 1995. Also in 1995, the petitioner coached a team in the International Hockey League All-Star Game. We note again that these accomplishments are in what The Hockey News deems to be a "minor league." Considering that counsel considers The Hockey News to be "the most prestigious trade journal in the field," we presume that counsel will defer to the magazine's assessment.

> *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.*

Counsel states that the petitioner "holds membership in good standing in one of the most regarded associations in the field, the International Hockey League (IHL), which requires outstanding achievement to obtain membership." The petitioner's position in the IHL is not a membership in an association, but rather an occupation in which he is employed. Furthermore, counsel provides no documentary evidence to show that employment as an IHL coach is

decided by recognized national or international experts, rather than by the owners and managers of a particular team.

Published materials 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.

Counsel states that the petitioner's accomplishments as a coach have been the subject of articles "in leading newspapers and magazines including *The Hockey News* and *The Journal Star*." Counsel lists seven articles as examples, five of which are Journal Star articles; the remaining two are from the Arizona Republic. Counsel does not cite any particular article from The Hockey News. Several articles, including the seven cited by counsel, accompany the petition.

Almost all of the articles are from the Journal Star, which from its content appears to be a local newspaper circulated in Peoria, and almost all of the Journal Star articles are by the same reporter (Dave Eminian). The other articles are likewise from local newspapers in St. Louis and Phoenix, all cities where the petitioner has worked as a head coach or assistant coach.

The plain wording of the regulation repeatedly stresses that the petitioner should be the subject of coverage in "major" publications and media. Because the statute demands national or international acclaim, the petitioner cannot satisfy this criterion unless he has been the subject of coverage in major national or international publications. Local newspapers with limited circulation do not constitute major media in this regard. The petitioner has not demonstrated sustained attention from major national media such as Sports Illustrated. While counsel maintains that The Hockey News is the preeminent hockey periodical, the petitioner has, for whatever reason, submitted nothing at all from this publication. Because the regulation calls for the submission of "published material," rather than third-party references to published material, the absent coverage from The Hockey News cannot carry any evidentiary weight.

In addition, the majority of the newspaper articles are not "about" the petitioner. Rather, they are about the local hockey team, and they mention and/or quote the petitioner. The petitioner has not shown that the media only infrequently identifies coaches in this manner.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel asserts:

> In 1990, [the petitioner] served as a professional scout for the St. Louis Blues, an NHL hockey team. In this capacity, [the petitioner] attended numerous professional and collegiate hockey games in order to evaluate the performance of potential NHL draft picks and trades.

The petitioner was not yet a coach when he performed the above activity, and therefore it cannot show that the above work places him among the top coaches. The duties described above appear to be typical of scouts for professional sports teams. There is no indication that the petitioner achieved acclaim through his scouting work, or that he "judged" players in any manner that was not typical of the scouts employed by every NHL team. Counsel continues:

> In 1993, the Blues approached [the petitioner] with an offer to begin his coaching career as Head Coach for the Peoria Rivermen. In this capacity, he was principally responsible for scouting and drafting players, as well as evaluating the strengths and weaknesses of each player in order to create strategies and fill positions. In addition, he was responsible for selecting players for the NHL draft.

Counsel does not explain how the above duties differ from that of any coach of a minor-league "farm team." If every coach acts as a "judge" of his or her players, then the petitioner does not place himself at the top of the field merely by doing what is expected of every professional hockey coach.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

Counsel contends that "[e]very professional hockey game in which [the petitioner] participates . . . is by the very definition a presentation of his work." This claim is not persuasive. The plain wording of the regulation applies to "artistic exhibitions or showcases," which does not apply to hockey games. Furthermore, given that hockey games are virtually always played before an audience, every hockey coach "displays" his or her work in this way. As above, counsel attempts to represent the inherent duties of every hockey coach as evidence that this particular hockey coach is at the top of his field.

Of greater relevance to the "display" aspect of professional sports is another regulatory criterion:

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

While hockey is not a "performing art" *per se*, sustained acclaim is more readily demonstrated by the size of the team's fan base than by the mere fact that, like every other team, it plays in public.

The petitioner could arguably satisfy this criterion by demonstrating that his team sells more tickets than most other teams, and that his team has sold more tickets under his guidance than before (or after) his tenure with that team. The petitioner could also show that televised games featuring his team attract consistently higher national ratings than televised games featuring other teams. The petitioner, however, has not provided any evidence that his team's games are televised at all, let alone nationally.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel states that the petitioner satisfies this criterion because he was head coach for the Peoria Rivermen from 1993 to 1995, and assistant coach for the Phoenix Coyotes in the 1996-1997 season, during which the team reached the Stanley Cup playoffs. Counsel notes that the petitioner is currently head coach of the Kansas City Blades, an IHL team.

The petitioner has not shown that his minor league hockey teams enjoy a distinguished reputation. It is not acceptable to assert that every professional hockey team is, by definition, distinguished. The petitioner bears the burden of establishing that the Peoria Rivermen and the Kansas City Blades are among the best-known and most-respected hockey teams, not just in Peoria and Kansas City, and not just in the International Hockey League, but throughout the entire professional hockey industry in the entire United States, in comparison with the Detroit Red Wings, the Boston Bruins, and other major teams which are recognized by hockey enthusiasts throughout the nation. Again, we return to the above-cited supplementary information which specified that involvement with a major league team can contribute to, but not by itself establish, extraordinary ability. The petitioner has never been the head coach of any NHL team, let alone a top NHL team, and in his one season as an assistant coach for an NHL team, he was not at the top of that one team's coaching hierarchy, let alone the field as a whole.

Counsel acknowledges the supplementary information, and professes agreement with the principle that affiliation with a major league team is not presumptive evidence of eligibility. Counsel then contradicts himself by arguing that "the professional leagues take only the best of the best." Counsel does not explain how it can possibly be consistent to maintain that (1) not every major league player is at the top of the field, but nevertheless (2) every "professional league" player, major or minor, is by definition "the best of the best." This latter assertion is tantamount to claiming that every hockey player who is paid to play the game is among "the best of the best," and thus the entire field is at the very top of the field. Such a conclusion is clearly absurd.

The petitioner submits letters from various witnesses. Ken Hitchcock, head coach of the Dallas Stars, states that the petitioner "is without question one of the very best professional hockey coaches in the United States. His accomplishments place him at the very top of this sport." Mr. Hitchcock's own achievements, however, seem to belie this assertion. He states:

> I have posted a winning record in every season as a head coach prior to joining the Stars, including record-breaking numbers in the Western Hockey League in the late 1980's. . . . I led the [Stars] to a first place finish in the NHL, the first time in franchise history the Stars have won the Presidents' Trophy. In February 1998, I earned by 100th career NHL victory, becoming the fastest coach in team annals to reach the milestone and the 12th fastest coach in NHL history to reach 100 wins. I have also been named coach for the World All-Stars at the 1998 NHL All-Star Game, the fourth time in the last five years that I have been behind the bench for an All-Star contest.

Mr. Hitchcock's litany of achievements as a coach appears to dwarf that of the petitioner. Other witnesses assert that the petitioner is one of the dominant coaches in the International Hockey League, but they offer little comment regarding the petitioner's single season as an assistant coach for an NHL team. Several of these witnesses repeat counsel's assertion that The Hockey News named the petitioner "Coach of the Year." Because the petitioner has failed to submit a copy of The Hockey News, or any other evidence from the publisher of that magazine, we cannot confirm this assertion. We note again the article from the Journal Star which specifies that The Hockey News named the petitioner "Minor League Pro Coach of the Year." This article, unlike the witness letters, was not written for the express purpose of supporting this visa petition.

The director informed the petitioner that the documentation submitted with the petition was not sufficient to establish extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "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."

In response to this letter, the petitioner has submitted arguments from counsel and letters from officials of several IHL and NHL teams. Counsel's arguments essentially repeat earlier assertions as well as the newly submitted letters.

The new letters, like the earlier letters, demonstrate the gulf between the petitioner and the most accomplished coaches in hockey. For example, William Scott Bowman, head coach of the NHL Detroit Red Wings, lists his own accomplishments:

> I am . . . a member of the Hockey Hall of Fame and the winningest coach in National Hockey League history with more than 1,000 regular season victories. I have been referred to by Sports Illustrated as "the best coach ever in a major professional sport," and a recent fan poll conducted by ESPN ranked me as fourth in the top ten Greatest Coaches of the 20th Century. Moreover, I am honored to state that I have won eight Stanley Cup Championships as a coach in the National Hockey League with three different teams.

Mr. [redacted] states "it is my opinion that [the petitioner] is one of the small number of elite coaches in professional hockey [who] has proven himself on both sides of the bench, as a coach and as a player." The statute calls for "extensive documentation" and the regulatory criteria list various types of objective documentary evidence to support a claim of eligibility. To qualify for this extremely restrictive visa classification, the petitioner must show not that Mr. [redacted] holds a high personal opinion of the petitioner, but that the petitioner's achievements rank alongside those of Mr. [redacted].

The one paragraph quoted above contains at least five major accomplishments in the field which the petitioner cannot claim, and portrays Mr. [redacted], unlike the petitioner, as a consistently successful major league coach who has won the attention of major national print and television media as well as the admiration of fans. It would be difficult to deny that Mr. [redacted] is at the top of his field, and equally as difficult to establish that the petitioner ranks alongside Mr. [redacted]

The subjective assessments of hockey officials, while not without weight, cannot overcome the demonstrated lack of documentary evidence which objectively places the petitioner among the most successful and best-known hockey coaches nationally or internationally.

The director denied the petition, stating that it is not sufficient to present a quantity of evidence and claim that the evidence fulfills the eligibility criteria. The director observed several shortcomings in the petitioner's evidence. For instance, the director noted that it is routine for the local media to cover local sports teams, and therefore these local articles do not demonstrate extraordinary ability, and the director disputed the claim that every hockey game in which the petitioner has participated represents "display" of the petitioner's work in the manner contemplated by the regulations.

On appeal, the petitioner submits copies of previously submitted documents as well as some new exhibits. The most relevant new documentation submitted on appeal is a letter from Robert J. McCammon of the International Hockey League, who states that the petitioner "ranks third among all IHL coaches and assistant coaches

in compensation." Counsel indicates that this evidence satisfies a previously unclaimed criterion:

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

As the record amply demonstrates, however, the NHL, not the IHL, is the top of the field among North American hockey players and coaches. The record does not offer any comparison between the petitioner's salary and the salaries paid to NHL coaches, nor does the record even contain first-hand documentation of the petitioner's salary (although newspaper articles from various periods indicate that the petitioner's annual salary as a head coach has ranged from $65,000 to somewhat less than $100,000).

Counsel again repeats several arguments first advanced with the initial petition, and then again in response to the director's request for further evidence. Counsel also addresses specific points made by the director by attempting to shift the burden of proof onto the director. For example, the director had concluded that the petitioner's "membership" in the IHL and NHL did not satisfy the regulatory criterion pertaining to memberships. Counsel asserts that this finding is "conclusory and inaccurate." Counsel does not, however, cite or produce any evidence at all to show that the NHL and the IHL are "associations" rather than what they obviously are, i.e. employers.

Counsel offers statistics regarding The Hockey News but it remains that even on appeal the petitioner has still not submitted the issue of The Hockey News which named him (depending on whom one quotes) either "Coach of the Year" or "Minor League Pro Hockey Coach of the Year."

In response to the director's assertion that coaches are routinely identified in local newspaper articles about sports teams, counsel simply repeats the prior assertion that the petitioner's name appears in several articles in the Arizona Republic and the Peoria Journal Star.

The remainder of counsel's brief is comparable to the above examples, consisting largely of previous arguments with some new assertions which either fail to rebut, or else fail entirely to address, the director's findings on appeal.

While the petitioner has submitted letters from a substantial number of IHL and NHL figures, many of these very individuals claim records of achievement which plainly dwarf the petitioner's own accomplishments. It is not insignificant when an NHL coach deems the petitioner to be among the best in the field; but when this coach, unlike the petitioner, is a member of the Hockey Hall of Fame, led major league teams to multiple Stanley Cup victories, holds a number of significant records, and has earned recognition

from ESPN and Sports Illustrated, it is simply unrealistic to expect the Service to evaluate this individual's statements without any regard to his own record of achievement.

The petitioner has had a significant and impressive career as a hockey coach. The record, however, simply does not offer consistent support for the contention that the petitioner is among the nation's most highly acclaimed hockey coaches. Attempts to define the petitioner into eligibility, for instance by arguing that only the best coaches work for professional leagues, or that so few individuals coach at the petitioner's level that the petitioner must be one of the best, are not persuasive. The Service has already stated its position that reaching the major leagues is not an automatic indication of extraordinary ability, and the petitioner in this case is a minor league coach (with the exception of a single season as an assistant coach for an NHL franchise). The petitioner clearly has friends in the industry, which is to be expected after a long and fruitful career in professional hockey, but the subjective assessments of witnesses chosen by the petitioner cannot overcome the absence of objective documentation which the regulations demand.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a professional ice hockey coach 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 indicates that the petitioner shows talent as a coach, and has achieved prominence in a minor league, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.