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U.S. Department of Justice
Immigration and Naturalization Service

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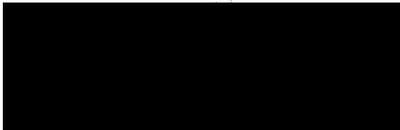
Date: OCT 02 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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

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

At the time she filed the petition, the petitioner was a 16-year-old tennis player competing in amateur junior tournaments. 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). 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. The petitioner has submitted evidence which, she 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.

The petitioner submits a photograph of herself standing in front of several shelves of trophies and medals. None of the prizes can be identified from the photograph. Because most prizes are not nationally or internationally recognized, the photograph cannot suffice to establish that the petitioner has met this criterion.

The Junior Tennis Council of the Southern California Tennis Association (a local section of the U.S. Tennis Association) named the petitioner "an area sportsmanship award winner for the Girls 16 Division for the year of 1999." This award, on its face, is plainly local rather than national or international.

The petitioner submits a list of competitions in which she has participated during the 1990s. This list does not constitute documentary evidence of the petitioner's participation or of any prizes won in those competitions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Documentation in the record shows that, as of December 2000, the petitioner was ranked 14th in the "Southern California Girls' 16 Singles Standings." This ranking is of little consequence because it is neither national nor international; it is limited to part of one state, and even then it addresses only 16-year-old tennis players. We cannot define the petitioner's "field" as consisting entirely of female tennis players born in 1984. On a national scale, the petitioner is listed as 71st in the "2000 USTA Aug Girls' 16 Singles Final Rankings." The ranking list indicates a total of 231 players listed, which places the petitioner near the bottom of the top third of the list.

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.

The petitioner submits a copy of her membership card from the United States Tennis Association, but no documentation from that association to show its membership requirements. Counsel refers to the petitioner's "memberships in SCTA Zone Team Championships, as well as The Eddie Herr International Junior Tennis Championships," but participation in a competition is not inherently a "membership." Of the two competitions named, the former is plainly a local one ("SCTA" standing for "Southern California Tennis Association"). As for the latter competition, the letter contains a letter dated October 4, 2000, indicating that the petitioner has been invited to be one of 64 athletes competing in the event, to be held that November in Florida. There is no follow-up evidence to establish the petitioner's performance at that competition, despite the fact that the petition was not filed until December 2000, well after the event took place. Rick Workman, tournament chairman, states that the Eddie Herr championships feature "the world's

best 'up and coming' young international junior tennis players" rather than established stars. As we have already stated, we will not consider "junior tennis players" to represent a separate field, distinct from acclaimed tennis players such as Andre Agassi and the Williams sisters. The petitioner's youth does not entitle her to a different, more lenient burden of proof.

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.

The petitioner is identified in various articles in several issues of an unidentified publication. The publication is issued by the Braemar Country Club, the insignia for which appears on an upper corner of each page. There is no evidence that this country club bulletin is a nationally or internationally circulated major publication, or that it is distributed to anyone other than members of Braemar Country Club.

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

Counsel asserts that the petitioner meets this criterion, but counsel fails to identify the petitioner's claimed contributions. Witness letters do not mention any specific contribution to the field, or otherwise reflect widespread acclaim. John Lansville, manager of Player Development for the Southern California Section of the U.S. Tennis Association, states that the petitioner "has aspirations to become a professional tennis player," and "if she continues to work hard that she has the talent and the desire to make it to that next level."

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

Counsel refers to "exhibitions/championship games nationally and internationally," but does not explain how an athletic competition amounts to an artistic exhibition or showcase. By this logic, every tennis player who has competed in public meets this standard.

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

Counsel refers to the petitioner's "performances in leading national and international junior tennis championships." Counsel has, thus, attempted to cite the petitioner's participation in competitions to satisfy the criteria pertaining to memberships in associations; artistic display; and leading or critical role. It is untenable, however, to assert that an athlete can meet three separate criteria (thus establishing eligibility) on the basis of having competed in tournaments, without even considering whether the athlete had actually won those tournaments.

On March 24, 2001, the director advised the petitioner that her initial submission was not sufficient to establish eligibility. Specifically, the director informed the petitioner of the following shortcomings in the record: (1) the Southern California Tennis Association Sportsmanship Award "is not a national/international award"; (2) the petitioner has not shown that the U.S. Tennis Association requires outstanding achievements of its members; and (3) the petitioner has not shown that the published material submitted with the petition derives from "a professional, major trade publication or other major media."

The petitioner's response included updated documentation of her sectional and national ranking, indicating that her June 2001 national ranking was 32. The petitioner did not hold this ranking as of the date of filing in December 2000, and her June 2001 ranking cannot retroactively establish that she was eligible the previous December. See Matter of Katighak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner has submitted a copy of a newspaper article about her. Counsel states that the article is from the *Los Angeles Times*. The copied clipping does not contain the name of the publication, but it indicates the author is a "Times staff writer." Even if this "Times" is the *Los Angeles Times*, we note that the article bears the heading "Valley/Ventura County Tennis," suggesting that the article appeared only in a locally distributed section of the paper. Also, this article did not exist as of the filing date. Counsel states that the article was published on June 17, 2001, the same day that counsel submitted the response package to the Service. The article discusses upcoming summer tournaments, which is consistent with a June publication date. The article also refers to the petitioner as belonging to the 18 division rather than the 16 division.

The petitioner won the "2000 Most Improved Player" award from the Southern California Tennis Association. This award was not even presented until June 27, 2001; the petitioner's submission contains only the invitation and schedule from the then-upcoming award ceremony. The remainder of the documentation consists largely of a scholarship offer and letters from various colleges and universities, describing their tennis programs and urging the petitioner to consider attending their universities. All of this documentation is dated May or June 2001. Thus, nothing that the petitioner submitted in response to the director's March 24, 2001 notice pertains to the petitioner's situation as of the December 2000 filing date.

The director issued a second request for evidence on August 29, 2001, advising the petitioner that the petition was still not approvable as it then stood. In response, the petitioner submitted documentation showing that she reached the finals or semifinals of three international junior tournaments in July and August of 2001. At the last competition, the petitioner injured a leg muscle which interrupted her ability to compete. Letters in the record indicate that the petitioner was unable to compete "through the end of December."

The director had, once again, requested documentation of "the minimum requirements and criteria used to apply for membership in . . . the U.S. Tennis Association." The petitioner has

responded with documentation that states “[a]nyone wishing to become a member may join” the U.S. Tennis Association.

The director denied the petition, stating that the evidence submitted by the petitioner falls short of establishing that the petitioner has earned sustained national or international acclaim or risen to the top of her field. On appeal, counsel argues “the Service applied the standards of a professional tennis player, although self-petitioner is only in amateur junior tennis competitions.” Counsel states that the petitioner’s “petition should not be determined by standards in the professional level, such as winning the United States Tennis Open Tournament or the Wimbledon Tournament, where self-petitioner has not competed, but intends to do so in the future in due time.” Counsel asserts that the petitioner is “hoping someday to break into the professional-level rank,” thus effectively acknowledging that the petitioner is not at the highest level of competitive tennis. It remains that the best-known tennis players compete at the professional level, and the petitioner must at the very least show that she has reached a comparable level of acclaim.

We cannot accept that “junior” tennis is a field apart from other classes of tennis, because the petitioner will not be able to make a lasting career of playing junior-level tennis. Furthermore, the petitioner seeks an employment-based immigrant classification. Whereas professional tennis players can earn substantial income from prize money and endorsements, the petitioner has not shown that her activity has ever been a source of income or “employment” in any reasonable sense of the word. It remains that the petitioner must, by law, establish sustained national or international acclaim in order to qualify for the highly restrictive immigrant classification she seeks, and that she had already earned such acclaim as of the date she filed the petition (in this case, December 2000). The record as of that time indicates that the petitioner had attracted minimal attention outside of southern California. Any subsequent achievements have weight only in the context of a new petition, although we see nothing in the petitioner’s 2001 record to establish that she became one of the nation’s top tennis players during that time.

The remainder of counsel’s brief consists of arguments regarding previously submitted materials. For instance, counsel argues that there is no association in the petitioner’s field that requires outstanding achievements of its members, and therefore the petitioner’s membership in the U.S. Tennis Association, which accepts every dues-paying applicant, is “comparable evidence” pursuant to 8 C.F.R. 204.5(h)(4), which in turn allows for the submission of comparable evidence when a given criterion does not apply to an alien’s field of endeavor. This argument fails because the “comparable evidence” must still demonstrate sustained acclaim. If anyone can become a member of an association, then membership in that association is not “comparable” to evidence of sustained acclaim. Counsel emphasizes the petitioner’s rankings (focusing on her mid-2001 rankings that occurred well after the filing date), but it remains that these are junior rankings that do not include the nation’s top tennis players. The repeated assertion that the petitioner hopes eventually to compete as a professional indicates that the petitioner does not yet qualify to compete at that level, in much the same way that an undergraduate college student does not yet qualify for a tenured professorship or department chair at a major university. The

petitioner's aspirations of future achievement (assuming she has recovered from her injury) are no substitute for documentary evidence of existing acclaim.

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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a tennis player 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. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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 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.