



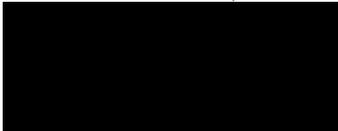
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-01-283-50227

Office: California Service Center

Date: **OCT 07 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: SELF-REPRESENTED

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 to classify the beneficiary 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 beneficiary's 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a badminton coach. In general, extraordinary ability as an athlete is not, in and of itself, evidence of extraordinary ability as a coach. We do not deny that there exists a nexus between competing and coaching badminton. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider

the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach of athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

The petitioner must establish that the beneficiary's national or international acclaim has been sustained. The beneficiary in this case has been coaching for several years since she stopped competing as a badminton player. In such a situation, where the alien has had ample time to establish a reputation as a coach, the petitioner must show that the alien has earned sustained national or international acclaim based on the alien's achievements as a coach rather than her prior reputation as an athlete. As will be discussed below, the petitioner has not established that the beneficiary has a one-time achievement or meets three of the regulatory requirements based solely on her coaching abilities, or even, in fact, as an athlete.

The petitioner did not submit any evidence that the beneficiary had previously coached badminton until the appellate stage. On appeal, Chris Kinard, President of Pacific Rim Marketing, asserts that the beneficiary was a national badminton coach in Indonesia. He provides no explanation for his knowledge of this assertion. The petitioner also submitted a letter from Munir Rochijat, General Secretary of the Indonesian Badminton Federation. Mr. Rochijat asserts that the beneficiary was "one of the reputable coaches in preparing the Indonesian badminton players for the world events."

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).

Initially, the petitioner submitted evidence that the beneficiary was a member of the Indonesian team at the Uber Cup in New Zealand in 1978, that the Indonesian team won the Uber Cup for 1974-1975 and that the beneficiary was a member of the team at that time, and that the beneficiary and her partner won the mixed double Danish Open for 1974-1975. In response to the director's request for additional documentation, the petitioner asserts that these awards constitute a one-time achievement. The petitioner did not, however, provide evidence reflecting that these competitions have the same international recognition as the Olympics for any sport or Wimbledon, the British Open, or the U.S. Open for tennis. Thus, the petitioner has not established that these competitions are any more than lesser internationally recognized awards. Moreover, the beneficiary intends to enter the United States to coach badminton. The regulations do not permit comparable evidence for the one-time achievement. The record does not establish that the beneficiary has won a major international recognized prize as a coach.

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.

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

Even if we concluded that the beneficiary's Uber Cup and Danish Open awards constitute lesser internationally recognized awards, the beneficiary has not won any athletic competition since 1978. As such, the beneficiary has not demonstrated sustained acclaim as an athlete.

Moreover, the beneficiary intends to coach badminton in the United States. Awards won by the beneficiary's students during her tutelage would be comparable evidence for this criterion. While Munir Rochijat indicates that the beneficiary has been "one of the reputable coaches" preparing Indonesian badminton players for international competition he does not elaborate on the beneficiary's role, whether as head coach or an assistant coach, or the level achieved by the beneficiary's students while being coached by her. As such, the petitioner has not established that any of the beneficiary's students have won any national or international competitions while being coached by her.

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 has not submitted any evidence for this criterion.

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 record includes a copy of two pages from a foreign magazine reporting the results of the Uber Cup. The petitioner did not submit a full translation as required by the regulations at 8 C.F.R. 103.2(b)(3). Regardless, while the beneficiary is pictured as a member of the team in a team photo, the article appears to be simply reporting the results of the Uber Cup, and does not appear to be primarily about the beneficiary.

Moreover, the article is from the 1970's, and cannot establish the beneficiary's sustained acclaim. Finally, as the article relates to the beneficiary's participation on the Indonesian team as an athlete, it does not appear to be about the beneficiary's abilities as a coach.

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.

The record contains no evidence relating to this criterion. It is noted that judging one's students is inherent to the job of coach and is not evidence of national or international acclaim.

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

The record contains no evidence relating to this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains no evidence relating to this criterion.

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

This criterion does not apply to the beneficiary's field.

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

The record contains no evidence relating to this criterion.

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

The record contains no evidence relating to this criterion.

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

This criterion does not apply to the beneficiary's field.

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 badminton coach 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 other badminton coaches. 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.