



BA

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: EAC-01-225-56170 Office: Vermont Service Center

Date:

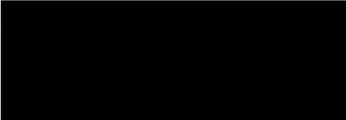
OCT 08 2002

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, Vermont 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 petitioner is a university and seeks to employ the beneficiary as a head women's hockey coach. 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

(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 hockey coach. Without discussing the beneficiary's accomplishments as an athlete, the director concluded that the beneficiary only had local notoriety as a coach. In general, we concur with the director's implication that 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 hockey. 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.

A 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 1995. 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.

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 relate to 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 beneficiary was a member of the national Canadian Women's Hockey Team when it won gold medals at the World Championships in 1990, 1992, and 1994. Therefore, the beneficiary meets this criterion as an athlete.

On appeal, the petitioner submits evidence that the beneficiary was selected as the ECAC Eastern Conference Coach of the Year for 2001-2002. A petitioner must establish the beneficiary's eligibility at the time of filing. See *Matter of Katighak*, 14 I&N Dec. 45, 49 (Comm. 1971). Awards won after the date of filing cannot be considered evidence of the beneficiary's eligibility at the time of filing. Moreover, the petitioner has not established that this a nationally recognized award. The petitioner was also a finalist for the 2002 American Hockey Coaches Association's Women's Ice Hockey University Division Coach of the Year award. As with the Eastern Conference Coach of the Year award, the petitioner's finalist status for the American Coaches Association's award occurred after the date of filing. Moreover, being a finalist for an award is not the same as winning the award.

Coaching a team or an athlete who wins a lesser national or international award can be considered comparable evidence for this criterion. The record does not reveal that the beneficiary had coached a team to win a lesser nationally or internationally recognized prize or award as of the date of filing. As such, she does not meet this criterion as a coach.

*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 beneficiary was a member of two Canadian Women's Hockey teams and the Canadian national team which won three world championships. While an athletic team is not an "association," membership in a team that competes exclusively at the national or international level can be considered comparable evidence under 8 C.F.R. 204.5(h)(4) if membership in such a team is the result of multi-level national competition, supervised by national experts, and if the team is considered to be at the top level of competitive teams. As such, she meets this criterion as an athlete. The petitioner, however, has not provided evidence of exclusive memberships based on her coaching ability.

*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 submitted articles regarding the beneficiary's athletic achievements in the *Toronto Star*, the *Kitchener Waterloo Record*, the *Kincardine Independent*, the *Daily Sentinel Review*, and an unidentified *Chronicle*. Despite naming the beneficiary, most of these articles are about the beneficiary's team. Some of the articles, however, do focus on the beneficiary personally, including an article in the *Toronto Star*. As such, the beneficiary arguably meets this criterion as an athlete.

The petitioner submitted articles about the beneficiary's coaching in the *Niagara Gazette* and the *Buffalo News*. These local publications are not major media. On appeal, the petitioner submits an article profiling her career including her coaching jobs published in the Fall/Winter 2001 edition of *Eve*. The cover of the magazine indicates that it is "the voice of Western New York Women." As such, it appears to be a local publication. Moreover, it also appears that the article was published after the date of filing, April 30, 2001. Thus, the beneficiary does not meet this criterion 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.*

Tom Renney, Vice President, Hockey and Head Coach, National Men's Team Canadian Hockey Association, asserts that the beneficiary was an "evaluator" for the Canadian National Women's Team in May 1999. Counsel asserts that this position involved assisting with the selection of players for the team. The beneficiary arguably meets this criterion as an athlete and coach since she'd been coaching for four years at the time. Nevertheless, it is only one criterion.

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

The beneficiary has written articles on Women's Hockey during the 1998 and 2002 Olympics and served as a color commentator for CBC in Canada. While these articles and commentary evaluated the competing teams, they do not reach the level of scholarly articles on the sport of hockey.

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 beneficiary has distinguished herself as a hockey 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 indicates that the beneficiary shows talent as a hockey coach, but is not persuasive that the beneficiary's achievements set her significantly above almost all others in her 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.