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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

[redacted]

File: EAC 02 062 50268 Office: Vermont Service Center Date: AUG 18 2003

IN RE: Petitioner:
Beneficiary: [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)

IN BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office ("AAO") dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will be denied.

It is noted that the petitioner was initially represented by [redacted] Mr. [redacted] will be referred to herein as the petitioner's former counsel, or previous counsel. References simply to "counsel" will refer to the petitioner's current attorney of record, who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, on motion.

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, a tennis club, seeks to hire the petitioner as a tennis coach. In the appellate decision, the AAO affirmed the director's determination that the petitioner had not established that the beneficiary had the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

The AAO stated:

> 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The beneficiary intends to work as a coach in the United States. While a tennis player and a coach certainly share knowledge of tennis, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. We do not deny that there exists a nexus between playing and coaching tennis. 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. Thus, we will examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated the beneficiary's extraordinary ability as an athlete, we will consider whether the level at which the beneficiary has coached.

The regulation at 8 C.F.R. § 204.5(h)(3) 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 AAO's appellate review found that the beneficiary had met only one of the criteria as an athlete (lesser nationally or internationally recognized prizes or awards for excellence in the field), and none as a coach.

The AAO concluded the appellate decision, stating:

> In light of the above, the beneficiary does not meet at least three of the criteria as a coach. In addition, he also fails to meet three of the criteria as an athlete. As such, we need not consider whether any acclaim as an athlete has been sustained through coaching activities at a national level.

On motion, the petitioner submits additional witness letters, informational material about those witnesses, player rankings for individuals the beneficiary is purported to have coached, and two newspaper clippings (dated 1992 and 1994) citing tennis results from local competitions won by the beneficiary. The two newspaper clippings were from local publications, and each devoted no more than two sentences to the beneficiary. Therefore, the clippings would not satisfy the "published material about the alien in… major media" criterion.

In a two-page statement accompanying the motion (filed on February 14, 2003), counsel states: "Appellant is now submitting evidence that [the beneficiary] has in fact coached some of the best individual and doubles players in the world." However, as noted in the appellate decision, the petitioner must still establish that the beneficiary meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). On motion, rather than addressing how the petitioner's evidence satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), counsel's arguments relate mostly to the secondary issue of the beneficiary's coaching of individuals at the national or international level. In the appellate decision, the AAO specifically stated that because the beneficiary had not met three at least three of the regulatory criteria, it "need not consider whether any acclaim as an athlete has been sustained through coaching activities at a national level."

In addressing the AAO's finding that the evidence did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii), counsel takes issue with the AAO's statement that the beneficiary had not "coached any national team above the junior level." Counsel states:

> Respectfully correcting the Honorable AAO Officer, tennis is an individual sport not a team sport. Although tennis teams exist at the high school and college level, all matches are individuals or doubles. Thus, a top coach would not be a team coach, but rather, an individual or doubles coach.

We agree with counsel only to the extent that top tennis coaches need not coach a team of players to demonstrate extraordinary ability under this visa classification. However, an alien who coaches individual players at the national or international level must still demonstrate that at least three of the regulatory criteria have been met.

In addressing the beneficiary's coaching of individual players, counsel asserts that the beneficiary has coached teenager [redacted] at the national level and professionals [redacted] and [redacted] at the international level.

The petitioner submitted a letter of support from the parent of [redacted] confirming that the beneficiary is her son's primary coach. In addition, the petitioner submitted local newspaper clippings mentioning [redacted] local and regional age-group tournament victories. Rankings provided by the

petitioner show that as of January 31, 2003, [redacted] was ranked thirteenth among sixteen-year-old boys in the nation.[1] *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances (such as [redacted] 2003 ranking) that did not exist as of the filing date (December 10, 2001) cannot retroactively establish eligibility as of that date.

Also provided was a letter from [redacted] stating that he has known the beneficiary "for the last twenty years" and describing the beneficiary as "a great tennis player and a great coach." The petitioner also submitted a "Player Profile" which provides the ATP (Association of Tennis Professionals) rankings for [redacted] as of January 29, 2003. The information from the ATP indicates that [redacted] ranked as high as 590th in singles (1998) and 46th in doubles (2001).[2] [redacted] further states: "On the occasions that we have worked together in Connecticut, I have always left a better tennis player. [The beneficiary's] understanding of the game of tennis and his vast experience makes his coaching better than anything I have ever experienced." [redacted] does not state that the beneficiary was his primary coach, nor does he provide the specific dates of his tutelage.

Also submitted was a letter from [redacted] Head Tennis Professional at the Tokeneke Club in Darien, Connecticut, and a 2000 inductee into the NCAA (National Collegiate Athletic Association) Tennis Hall of Fame. He states: "I have worked with [the beneficiary] for nine years and he has developed into one of the finest tennis teachers I have seen."

Counsel states that [redacted] ranked 11th in the world, [would] supply a letter... documenting that [the beneficiary]... coached him at the highest level."[3] Counsel's statement accompanying the motion indicated that "additional evidence and a brief" would be submitted to the AAO within thirty days. As of this date, more than five months later, the record contains no follow-up letter from [redacted] showing that the beneficiary has regularly coached him "at the highest level." Being contacted by his former doubles partner for "tips and advice" would not equate to the beneficiary's fulfillment of primary coaching responsibilities for this player at the national or international level. Far more persuasive would be first-hand documentation showing, for example, that the beneficiary has accompanied [redacted] to Grand Slam tennis competitions (as his official coach).

The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence in furtherance of a previously-filed motion. By filing a motion, the petitioner does not guarantee itself an open-ended period in which to repeatedly supplement the record with evidence.

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[1] It is not clear whether this listing includes sixteen-year-olds who compete professionally.

[2] It has not been shown that [redacted] ever advanced beyond the second round at a Grand Slam Tournament.

[3] The record does not indicate whether the beneficiary's college coach, [redacted] is related to [redacted]

Otherwise, a petitioner could indefinitely delay the adjudication of the motion, simply by repeatedly submitting new documents and requesting still more time to prepare still more submissions. Any consideration at all given to such untimely submissions is completely discretionary.

On March 6, 2003, the petitioner submitted a brief from counsel in support of the motion to reopen, copies of documentation previously submitted, an additional letter from the parent of [redacted] an undated article about [redacted] from the *Kalamazoo Gazette* (which appears to have been published subsequent to the petition's filing date), a letter from Neville Godwin, and a player profile from the ATP indicating that Neville Godwin ranked as high as 90th in singles (1997) and 57th in doubles (2000).

[redacted] states that he has "personally experienced [the beneficiary's] coaching expertise" and "seen his own results improve tremendously under [the beneficiary's] coaching guidance," but he does not state that the beneficiary has served as his primary coach, nor does he provide the specific dates of his tutelage. It has not been shown, for example, that the beneficiary was coaching [redacted] when he advanced to the fourth round at Wimbledon in 1996 and was subsequently defeated.

We acknowledge that [redacted] and [redacted] are all highly respected individuals in the sport of tennis. Reputation by association, however, does not establish that the beneficiary himself has earned sustained national or international acclaim as a player or coach. If the beneficiary's achievements are not widely praised outside of his personal tennis acquaintances, then it cannot be concluded that he enjoys sustained national or international acclaim. Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Evidence in existence prior to the preparation of this petition would carry far greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

We note that several of the documents submitted in support of the motion did not exist at the time the petition was filed. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Bureau requirements. *See Matter of Izumii*, 22 I&N 169 (Comm. 1998), and *Matter of Katigbak, supra*. Pursuant to these precedent decisions, the petitioner cannot simply continue to add more and more documentation to an already-adjudicated petition, in hopes of eventually rendering the petition approvable. It is noted that the petitioner has supplemented the record three times since the filing of the appeal.

On motion, counsel for the petitioner has offered no discussion regarding the evidence that existed at the time of filing or how it satisfies the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). Further, the petitioner's motion has not specifically disputed any of the AAO's appellate findings other than asserting that the beneficiary has indeed coached players at the national and international level.

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. Therefore, we concur with the AAO's appellate finding that the petitioner has not established the

beneficiary's eligibility pursuant to the pertinent statute and corresponding regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The AAO's decision of January 17, 2003 is affirmed. The petition is denied.