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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

PUBLIC COPY

[redacted]

MAY 2 2003

File: WAC 01 256 55308 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON 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 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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, as a tennis player and coach. The director determined the petitioner had not established the sustained national or international acclaim necessary for that visa classification.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed 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.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary 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 ranking lists from the Macedonian Tennis Association (MTA), showing that the petitioner ranked first in Men's Singles in both 1998 and 1999, as well as in Men's Doubles in 1998. The petitioner also ranked third in Men's Doubles in 1999. From 1992 to 1996, the petitioner attended Rollins College on a full athletic scholarship. According to men's tennis coach [redacted] the petitioner was captain of the men's tennis team for three of his four years at Rollins, "reached the semifinals of the NCAA [Division II] tennis tournament and lead [sic] our team to the top three in the nation every year he was with us." [redacted] president of MTA, states that the petitioner won or placed highly in championships in his age range from 1985 to his retirement in 1999.

[redacted] who identifies himself as "the number 1 tennis player in Macedonia," attributes his own success to the petitioner's coaching skills. [redacted] vice president of MTA, states that Mr. [redacted] is the "best ever junior player in Macedonia," and asserts that the petitioner has also worked with other top-ranked players in Macedonia. Other materials in the record identify Ivan Nikolovski as the petitioner's father.

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 asserts that the petitioner satisfies this criterion by serving as captain of Macedonia's team in the international Davis Cup competition. Top officials of MTA corroborate the petitioner's captaincy of the team. While a berth on a national athletic team is not membership in an association, there is a similarity in that athletes from throughout the country vie for places on the team, and their placement is ultimately determined by national-level competition, with the best-performing athletes earning team membership. We can therefore consider a membership at this high level to represent comparable evidence under 8 C.F.R. § 204.5(h)(4).

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.

Articles about the petitioner have appeared in *Macedonian Sport*, *Dnevnik*, and other publications. While some published articles contain only passing mentions of the petitioner, he is clearly the focus of other articles in the record. For most of the articles, the required translations are either incomplete or entirely absent.

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 that the petitioner's roles as captain of the National Junior Team and president of the MTA Junior Committee "requires him to judge the tennis skills of other players on a national level." The petitioner has not shown that these posts required him to act as a "judge" beyond the normal evaluations present in any superior-subordinate relationship. The regulations address leadership positions in a separate criterion, discussed below. Therefore, we cannot find that holding these same leadership positions is synonymous with acting as a judge at a national or international level.

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

The petitioner has served as the President of MTA's Junior Committee and as coach of Macedonia's national junior teams, which have competed at the international level.

The director instructed the petitioner to submit additional evidence, stating that the initial filing was not sufficient to establish eligibility. The director stated "[y]ou state that you have retired from tennis and will work as a coach. Therefore, you must establish you[r] acclaim as a coach. Tennis is an international sport, therefore you must establish sustained acclaim on an international level."

Counsel has acknowledged the petitioner's retirement from professional competition, but has stated that the petitioner has "resumed playing in amateur competitions and **does intend to play professionally** if he can play in the United States." The record contains no documentation to show the extent or success of the petitioner's involvement in amateur tennis. The petitioner has cited two reasons for his decision to stop playing professionally in Macedonia: the pay is better for coaches than for athletes, and the petitioner faced accusations that his father, as vice president of MTA, had improperly furthered the petitioner's career. The petitioner has asserted that he intends to resume competing professionally once he enters the United States, where players earn more money and where he has no high-placed relatives to cause suspicion as to the merits of his standing.

With regard to the director's assertion that the petitioner must show international, rather than national, acclaim, counsel argues correctly that there is no justification in the language of either the statute or the regulation for arbitrarily dividing fields of endeavor into "national" and "international" fields. The statute calls for evidence of "national or international acclaim," with no indication that national acclaim is sometimes insufficient. It is true that the record does not show that Macedonia is a major force in the international tennis community, but it is sufficient for the petitioner to show acclaim at the national, rather than international, level. We note that the petitioner's performance at Rollins College, a consistently successful team in Division II of the NCAA, indicates that the petitioner is capable of holding his own against U.S. athletes.

The director denied the petition, citing several perceived deficiencies in the record. The director acknowledged the petitioner's certified rankings, but stated that these rankings "do not rise to the standard of even a [sic] lesser nationally or internationally recognized prizes for excellence." He found that the petitioner's rankings in 1998 and 1999 do not constitute sustained acclaim because the petitioner has not established that he held such standing "over a considerable period of time."

While the record does not contain contemporaneous documentation of the petitioner's prizes and victories, the president of MTA has attested to the petitioner's numerous championships and

number one rankings, not only in 1998 and 1999 but, at the amateur junior level, back to 1985. 1998 and 1999 were simply the only years for which the MTA provided comprehensive listings of top-ranked players. It is difficult to imagine a more authoritative source than the president of Macedonia's official governing body for tennis, and it is equally difficult to imagine what constitutes a national award if not a national championship title. The letters and other documents from [redacted] qualify as documentation of the petitioner's receipt of lesser national prizes and awards. We acknowledge that there is no evidence that the petitioner has won international awards, but international awards are not necessary to establish national acclaim.

The director stated that the petitioner has provided no corroboration of the membership requirements for Macedonia's junior national team, and therefore that such membership appears to be open to all Macedonian tennis players in that age range. On appeal, counsel argues that membership in the MTA "is not open to all athletes," but does not elaborate. More significantly, counsel observes that "the Davis Cup Team is one whose membership requires outstanding achievements." The petitioner submits documentation establishing the Davis Cup as a significant international tennis competition. Each participating nation may select no more than four players for its team. Given the prestige of the competition, it stands to reason that slots on this team are highly coveted, that competition for those spaces would be fierce, and that any participating nation would have an obvious interest in ensuring that the team included its finest players. From the available information, we can infer that selection to the Davis Cup team is a rare and prestigious honor, comparable to election to a highly selective and restrictive association in the field. The petitioner's selection as captain of this team is further evidence of his standing even among the elite who are named to the Davis Cup team.

Regarding the published articles about the petitioner, the director states "citation of the work of others is expected and routine in the athletic community." The director appears to have taken language pertaining to the citations that routinely appear in scholarly journals, and substituted the word "athletic" for "scientific" without regard to the significant differences in context between scholarly journal articles and newspaper articles about tennis players. The director also stated that the publications are geared toward "the expatriate community," but there is no indication that any of the publications circulates outside of Macedonia.

More germane to the pertinent regulations, the director notes the absence of evidence that the published articles derive from publications with national or international, rather than local or regional, circulation. Counsel argues that *Macedonian Sport* is Macedonia's major sports periodical, analogous to *Sports Illustrated* in the United States, but the record contains no documentary evidence to support this assertion. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel repeats the assertion that the petitioner acted as a judge of the work of others in the field, but this claim is, like the one regarding *Macedonian Sport*, uncorroborated and therefore without weight. Counsel's assertion that a team captain must "judge the tennis skills of other players" relies on a vague definition of "judging" rather than any formal judging procedure, such as, for instance, the judging involved in selecting players for an Olympic team.

Counsel is on firmer footing when arguing that the petitioner has played leading or critical roles for distinguished organizations or establishments. As captain of several national teams, the petitioner has established a solid record as a leader of junior tennis teams at the national level. Given that the petitioner has stated that he intends to continue coaching at the same junior level, the relevance of his past junior tennis work is indisputable. The documentation in the record, while not as ample and comprehensive as it could have been, is sufficient to show that the petitioner has made the transition from professional athlete to coach with no diminution to his reputation or standing in the field.

The director stated that the petitioner "has not shown that his entry into the United States will substantially benefit prospectively the United States. There are no letters or evidence of prearranged commitments such as employment contracts or employment offers." On appeal, counsel observes correctly that there is no regulation defining the type of evidence needed to establish substantial prospective benefit, and that the classification requires no specific evidence of a job offer; the petitioner must only demonstrate plausible future plans. Counsel notes that top U.S. tennis officials have endorsed the petition, in letters that the director did not discuss. For instance, [redacted] president and chairman of the board of the United States Tennis Association, asserts that the petitioner "has had an extraordinary career as a tennis player and a coach," and that the petitioner "has risen himself to the top of the field." Ms. [redacted] states "it is my pleasure to help ensure that [the petitioner] becomes a part of the everyday tennis life in the United States of America." Letters such as this, from the top echelons of organized professional tennis in the U.S., amply demonstrate that the petitioner is recognized and welcome in the U.S. tennis community. The evidence suggests that the petitioner should encounter little difficulty in securing continued employment in the United States, through which he can benefit the United States.

In sum, counsel is correct in arguing that the director failed to give due weight to important evidence in the record, and that the director relied on improper, and at times arbitrary, standards in denying the petition. The petitioner has adequately demonstrated national acclaim in Macedonia as a tennis player and coach, and has thus met the minimum statutory and regulatory threshold for eligibility.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.