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Citizenship and Immigration Services

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BA

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536

[REDACTED]

OCT 28 2003

File:

[REDACTED]

Office: Nebraska 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]

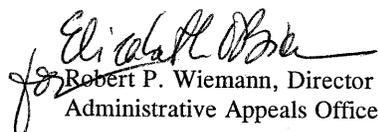
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 could not narrow the beneficiary's field to "youth hockey" and that the petitioner had not established the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues three points and indicates that he will supplement the record within 30 days. Counsel dated the appeal December 20, 2002. As of this date, more than nine months later, this office has received nothing further. As such, the appeal will be adjudicated on the evidence of record. Finally, counsel requests oral argument "because we believe that oral argument will aid the AAU in understanding the petitioner's arguments regarding this case and in particular the field the beneficiary is acting under." Oral argument is limited to cases in which cause is shown. A petitioner or his counsel must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Therefore, the petitioner's request for oral argument is denied.

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 CIS 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. The beneficiary played professional hockey in Canada and the United States in the late 1970's, began coaching for the Canadian Junior B league in the 1980's, coached for the professional British Ice Hockey Association from 1987 to 1995, served as assistant and then head coach for the Canadian Western Hockey League's Lethbridge Hurricanes in 1995, and then began youth coaching in Canada and the United States.

At best, the record demonstrates that the beneficiary may have enjoyed some acclaim while working as the head coach for professional ice hockey teams in Great Britain. Specifically, he was the head coach for a team that competed in the final championships for which he was honored as "Coach of the Year" by the British Ice Hockey Writers' Association; was one of two coaches who selected the players for the national All-Star team and coached that team; and was covered extensively in the British media. In fact, the British publication *Ice Hockey News Review* did a retrospective cover story on the beneficiary in 1999, four years after the beneficiary left Great Britain.

In response to the director's request for additional evidence, counsel argued that the beneficiary's evidence of acclaim in Britain, specifically his 1990-1991 Coach of the Year Award, should not be discounted merely because it was issued several years prior to the filing date of the petition. Counsel questioned whether the Service (now CIS) would discount 20-year old Nobel Prizes. A Nobel Prize falls under the one-time achievement for which no other evidence is required other than that the recipient intends to work in his area of expertise. Moreover, we are not discounting the beneficiary's award. Rather, the petitioner must demonstrate that the beneficiary has sustained any acclaim he may have had in Britain during the seven years between leaving Britain and filing the instant petition.

Counsel also argued that the beneficiary's field is "youth hockey" coaching and that the beneficiary should not be compared to National Hockey League (NHL) coaches. Counsel cited *Racine v. I.N.S.*, No. 94 C 2548 1995WL 153319 (N.D.Ill. Feb. 27, 1995), for the proposition that NHL players and coaches are their own field. Counsel also cited *Buletini v. I.N.S.*, 860 F. Supp. 1222 (E.D. Mich. 1994) in support of his argument that an alien's field may be narrowed.

The director rejected counsel's argument and determined that narrowing the beneficiary's field in such a manner would result in top youth coaches being approved and middle-level professional coaches being denied. On appeal, counsel merely expresses his disagreement with the director's conclusion.

We concur with the director. In *Racine*, the court did not dispute the Service's conclusion that merely playing on an NHL team was insufficient even though selection for an NHL team separates the player from the majority of other hockey players. Rather, the court accepted that the proper inquiry was the alien's "ability as a professional hockey player within the NHL." *Id.* at *4. We do not read the court's decision as holding that those playing at a lower level than NHL players can qualify in a separate field that excludes professional players. Rather, the court held that being on an NHL team is not enough; one must also compare favorably with other NHL players. Contrary to counsel's

assertion, the court in *Buletini* found that the Service could not narrow the alien's field to nephrology, but must consider his field to be medical science when determining whether he sought to continue in his field of expertise. We cannot conclude that an alien's field must be viewed narrowly when evaluating his status in the field and broadly when determining whether he seeks to work in his area of expertise.

Finally, the director further determined that the beneficiary did not have sustained national acclaim as a youth hockey coach. While the director did not address the criteria claimed, we concur with the director's conclusion for the reasons discussed below.

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, quoted above, 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.

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

In response to the director's request for additional documentation, the petitioner submitted the beneficiary's 2001-2002 Northern Illinois Hockey League (NIHL) Leadership Award. According to the organization's secretary, the NIHL is the second largest amateur hockey league in the United States. While NIHL may be a large league, it is still not national. Regardless, the petition was filed on February 14, 2002. The petitioner has not established that the beneficiary received this award prior to that date. As such, it is not evidence of the beneficiary's eligibility on that date. The remaining awards all predate the beneficiary's entry into the United States. While an alien may demonstrate national acclaim in another country, as stated above, the beneficiary directed youth hockey in the United States for six years prior to the date of filing. In order to demonstrate sustained acclaim, the petitioner must demonstrate the beneficiary's recent acclaim in the United States.

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.

Prior counsel initially asserted that the beneficiary's coaching positions and participation with social programs such as P.U.C.K. and D.A.R.E. meet this criterion. The beneficiary's coaching positions are best considered under 8 C.F.R. § 204.5(h)(viii). The beneficiary's volunteer work for worthy social

programs, while highly commendable, is not evidence relating to his alleged acclaim as a coach. In response to the director's request for additional documentation, the petitioner submitted evidence of the beneficiary's participation on Amateur Hockey Association of Illinois (AHAI) committees. Contrary to counsel's assertion, Bob Mathson, president of AHAI, and Rich Becker, vice president of AHAI, do not assert that outstanding achievements are required to serve on these committees. Rather, Mr. Mathson states only that the beneficiary's appointment to the committees is a "testament that he is at the top of his field in the amateur hockey world." This general statement does not specify the requirements for the appointment or indicate that recognized national or international experts judge the candidates for the committees. Mr. Mathson then goes on to claim that the beneficiary's experience allows him to excel on these committees, a claim that is irrelevant to this criterion. Rich Baker similarly asserts that the role of Instructor in the USA Hockey Coaching Education Program "is reserved for the very top in their field" without specifying the actual requirements and the process of selection.

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 a 1977 article in the *Toronto Star Sunday Magazine* about the beneficiary's successful tryout to be on the Toronto Maple Leafs, noting that the beneficiary was "not a star" or a draft pick and that "sportswriters barely notice him;" U.S. newspaper articles about the beneficiary's performance as a player on the Pittsburgh Penguins; articles from the late 1980's in an unidentified newspaper about the beneficiary's coaching for the St. Catherines Butler Falcons; British newspaper and magazine articles about the beneficiary and his work as a coach for the Peterborough Pirates; articles printed in the 1992 British Ice Hockey Championship program and the 1993 and 1994 Benson and Hedges Cup programs; and articles in what appear to be local papers about the beneficiary's youth coaching. The petitioner has not demonstrated that the beneficiary has recently sustained any acclaim in the media in the United States, as the record does not reflect that the recent media coverage in the United States appeared in major media with national distribution.

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.

In addition to selecting players for the British All-Star team, which took place years before the petition was filed, the petitioner relies on the beneficiary's coaching in the United States and membership on the AHAI Player Development Committee. We concur with the director that evaluating the athletes being coached is inherent to the job of a coach and is not evidence of national or international acclaim. The record contains no information regarding the responsibilities of this committee other than counsel's assertions. Thus, the petitioner has not established that the beneficiary's volunteer participation on this committee is 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 petitioner submitted letters attesting to the beneficiary's development of three-on-three hockey, a 30-minute game where the clock stops only for penalty shots. The record does not reflect that this form of hockey has spread outside of Illinois. That the beneficiary is an inspirational coach to the young people he coaches is not an original contribution of major significance in the field.

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

The record reflects that the beneficiary is the petitioning club's Director of Hockey Operations. Clearly, this is a leading role for the petitioner. While the petitioner has produced some winning amateur teams, the petitioner has not established that it has a distinguished reputation nationally. For example, the record does not reflect that the club draws more college or NHL recruiters than other youth hockey clubs. Moreover, while the AHAI clearly requires the volunteer services of talented coaches, we cannot conclude that every volunteer on every committee plays a leading or critical role for the organization as a whole.

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

The petitioner submitted certification from the British Ice Hockey Association that the beneficiary's salary averaged £600 per week; a letter from the petitioning club affirming their offer to continue employing the beneficiary as Director of Hockey Operations for \$80,000 per year; certification from the Illinois Department of Employment Security reflecting that the "prevailing wage" for Director of Hockey Operations locally is \$41,260 per year. On appeal, counsel criticizes the director for not conducting a salary survey. It is the petitioner's burden to demonstrate the beneficiary's eligibility. CIS is not obligated to research salaries in the beneficiary's field. The record does not demonstrate that the beneficiary's salary is comparable with the highest hockey coaching salaries nationwide.

Finally, in response to the director's request for additional documentation, counsel asserted that many of the criteria do not apply to the beneficiary's field and requested that letters from the beneficiary's colleagues be considered "comparable" evidence pursuant to 8 C.F.R. § 204.5(h)(4). On appeal, counsel asserts that the director erred by failing to consider the letters. Counsel's request to accept the letters as comparable evidence is peculiar in light of counsel's assertions that the beneficiary meets seven of the ten criteria. If seven of the ten criteria are applicable and an alien need only meet three, we fail to see why CIS should consider "comparable" evidence in this case. Moreover, the subjective opinions of individuals selected by the petitioner cannot be considered comparable to the list of 10 types of objective evidence listed at 8 C.F.R. § 204.5(h)(3) quoted above. Insofar as the letters address the ten criteria, they have been considered above.

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 himself as a hockey coach to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a hockey coach, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.