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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC-02-282-53063 Office: CALIFORNIA SERVICE CENTER Date: MAR 29 2004

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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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 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. While the director considered some of the beneficiary's achievements as a player, the director noted that the beneficiary intended to teach, evaluate, and manage minor league baseball players.

On appeal, counsel asserts, among other things, that the petitioner seeks to classify the beneficiary as an extraordinary baseball player.

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 Citizenship and Immigration Services (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.

Counsel asserts on appeal that this petition seeks to classify the beneficiary as an alien with extraordinary ability as a baseball player. 8 C.F.R. § 204.5(h)(5) requires the beneficiary to "continue work in the area of expertise." The beneficiary, however, intends to work as a teacher, evaluator, and manager of minor league players in the United States. While a baseball player and a manager certainly share knowledge of baseball, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching/managing are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching/managing a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, this office has applied the following balance. In a case where an alien has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise. In the instant case, however, the beneficiary stopped playing in 1990, twelve years prior to filing the instant petition. The regulations require "sustained national or international acclaim." The beneficiary has had twelve years to establish his reputation as an extraordinary manager and cannot rely on his reputation as an athlete to establish his sustained acclaim at the time of filing. Thus, we will only consider evidence of the beneficiary's acclaim as a manager, the job he has been doing for the last twelve years.

Furthermore, supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Thus, the mere fact that the beneficiary manages for a minor league team is insufficient evidence of his purported national or international acclaim. As will be discussed below, this information impacts on counsel's assertion that major and minor league association meets the membership criterion and her assertion that the beneficiary has played a leading or critical role for an organization with a distinguished reputation.

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 that purportedly meets 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 is currently employed by the petitioning ball club to manage the club's minor league farm team, the Visalia Oaks. In 1996, as manager for the Scottsdale A's (a rookie league member of the petitioning club), the beneficiary was recognized as Manager of the Year for the Arizona League All-Star Team. Keith Lieppman, Director of Player Management for the petitioning club, states:

> This award is of particular significance because most clubs regard managerial assignments in the Arizona Rookie League as particularly important. This league was established to assist the most promising young players in each organization with accelerated development of their skills. For this reason, the instructional and managerial staff there are selected with great care. Among this elite group, [the beneficiary] was selected for special recognition and honors.

Rob Richmond, President of the Arizona League Office, explains that the league is a rookie-level professional league whose franchises are owned by Major League Baseball Clubs. He further states the league "is a good starting point for people that desire to work in the Major Leagues one day." Regarding the Manager of the Year award, Mr. Richmond provides that the award was created to give recognition to managers who excel in competence, professionalism, teaching ability, winning percentages, and other intangibles.

The director requested evidence of the significance of the award, questioning whether it was a national award. In response, counsel references the above letters and her own assertions in her initial cover letter. The director concluded that the petitioner had not demonstrated any national or international awards.

On appeal, counsel quotes the letter from Mr. Lieppman and notes that the beneficiary was inducted into the Mexican Hall of Fame. We do not find the comments of Mr. Lieppman and Mr. Richmond persuasive. While the rookie league may be an important step for aspiring major league players, it remains that the award is not one for which the most experienced managers across the United States compete. Specifically, the award does not compare the beneficiary with baseball managers outside of Arizona, including those managing major league teams. We find that the beneficiary's Hall of Fame membership is best considered under the next criterion.

Finally, we note that in 2001 the Hispanic Heritage Baseball Museum, Inc. issued the beneficiary an "Award of Merit" as the manager of a Class A minor league team, the Visalia Oaks. The record, however, contains no evidence suggesting this award is a nationally recognized prize for excellence as a manager that the most experienced managers, regardless of ethnicity, aspire to win.

> *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.*

According to Allan Selig, Commissioner of Baseball in the United States, the beneficiary was accepted onto the Mexican League All-Star Team eight times and was inducted into the Mexican League Hall of Fame in 1998. Juan Filizola Gonzalez, Director of the Mexican Professional Baseball Hall of Fame, confirms that the beneficiary "was inducted into the Hall of Fame via special ceremony on July 10, 1998." Renato Vega Alvarado, President of the Pacific Mexican League, however, indicates only that the beneficiary played in five All-Star games from 1984 to 1988. Counsel also argued that the beneficiary's employment both as a player for the Montreal Expos and a manager "under the association of" the petitioning club serves to meet this criterion.

In his request for additional documentation, the director noted that the Hall of Fame induction was indicative of acclaim as a player only. In response, counsel argued that ability as a player is important to managing. In his final decision, the director appears to have rejected the beneficiary's Hall of Fame induction based on the fact that the Mexican League was not "aggressively scouted by American Major League Clubs" during the beneficiary's time as a player. The director also concluded that the petitioner had not demonstrated that the teams for which the beneficiary has played and managed have restrictive membership criteria.

time as a player. The director also concluded that the petitioner had not demonstrated that the teams for which the beneficiary has played and managed have restrictive membership criteria.

On appeal, counsel asserts that the U.S. major leagues have recruited from the Mexican league and provides examples. Counsel further questions the relevance of this issue. We concur with counsel that whether or not the Mexican League is a recruitment base for U.S. major league teams is not a relevant issue. The regulations only require national acclaim and do not specify that such acclaim must be in the United States. The beneficiary spent many years playing on Mexican teams and his induction into their Hall of Fame is consistent with national acclaim in Mexico as a player.

We do not contest that knowledge of baseball is crucial to managing. Nevertheless, it does not follow that every talented baseball player will be equally successful and acclaimed as a manager. The record contains no indication that the beneficiary's induction was based on his abilities as a manager in addition to as a player. Even if we considered this one national-level recent tribute to be persuasive, for the reasons discussed above and below, the petitioner has not established that the beneficiary meets any other 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 petitioner submitted an article in the July 1998 issue of its own magazine regarding the beneficiary. In addition, the petitioner submitted articles about the beneficiary and some that simply mention him by name published in the *Modesto Bee* about his managing the Modesto A's and in the *Visalia Times-Delta* and the *Porterville Recorder* about his managing the Visalia Oaks. The petitioner also submitted circulation materials indicating that the *Porterville Recorder* is distributed locally in the Visalia area. The petitioner also submitted materials regarding the circulation of the *Fresno Bee*. The submitted articles, however, appear in the *Modesto Bee*. Regardless, the *Fresno Bee* is also distributed locally in the Visalia/Fresno area, with little circulation outside the State of California.

The director requested evidence of the circulation of the above papers and noted that they must relate to the beneficiary's work as a manager. In response, counsel referenced previously submitted materials. The director concluded that the beneficiary meets this criterion. While we do not lightly reverse the director's favorable determinations, we cannot concur with this conclusion. All of the articles were published in newspapers with a circulation limited to the geographic area where the beneficiary worked. We cannot conclude that these papers, with little or no out of state distribution, constitute major media or are any way indicative of or uniquely consistent with national or international acclaim. Thus, the articles do not meet the plain language of the regulation.

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 references the beneficiary's managerial work both while a player on All-Star teams and as part of his duties as a manager for the Monterrey Industriales and the Scottsdale A's. In response to the director's request for additional evidence regarding the significance of these judging responsibilities, counsel asserted that sufficient evidence had been submitted. The director concluded that the beneficiary does not meet this criterion. The

On appeal, counsel argues that the petitioner chose the beneficiary for the manager position based on his expertise and talent as a player. While we do not deny that the beneficiary was chosen based on his talent as a player, that issue is not relevant. What is relevant is that the beneficiary intends to work as a manager. Thus, the petitioner must establish that the beneficiary is one of the very few at the top of the field of baseball managers. The evidence submitted to meet each criterion must be indicative of or at least uniquely consistent with the beneficiary's national or international acclaim. Thus, we can look at the type of "judging" the beneficiary has performed. The typical evaluation of one's players and prospective players does not set the beneficiary apart from other managers. Thus, duties inherent to the beneficiary's job do not meet this criterion.

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

According to Mr. Alvarado and the Enciclopedia del Beisbol Mexicano the beneficiary is one of the fourteen best all-time hitters, third in most hits, twelfth in hit doubles, sixth in hit triples, fifteenth in runs batted in, fifth in runs scored, and third in stolen bases in Mexican baseball.

Regarding the beneficiary's abilities as a manager, Joseph Gagliardi, President of the California League, asserts that the beneficiary "has been instrumental in the development of several young starts" for the petitioner.

In response to the director's request for additional documentation regarding the beneficiary's contributions as a manager, counsel reiterates the beneficiary's statistics and asserts that these contributions allow the beneficiary to excel as a manager. While the director did not explicitly state that the beneficiary meets this criterion, his discussion of the evidence implies that the director did reach that conclusion.

As stated above, the petitioner must establish the beneficiary's sustained acclaim. Even if we considered the beneficiary's impressive statistics to be relevant to his expertise as a manager, his accomplishments as a player ended in 1990. Thus, they cannot be considered evidence of his sustained acclaim as of the date of filing in 2002. The record contains no evidence of similar accomplishments as a manager during the twelve years the beneficiary has managed teams.

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

Counsel asserted initially that the beneficiary "showcases his talent at various community events." The initial submission included letters attesting to the beneficiary's community activities such as baseball clinics and school outreach activities such as D.A.R.E. In response to the director's observance that this criterion is applicable to visual artists, counsel asserts that the regulations do not mandate such a restriction. The director concluded that the record did not establish that the beneficiary showcases his talents.

On appeal, counsel references the letters from Mr. Selig, Mr. Lieppman, and John E. Katz, General Manager of the Modesto A's. Mr. Selig asserts that the beneficiary has displayed a commitment to the youth of the communities where he works and has taken time "in talking to them and putting on baseball clinics." Mr. Lieppman attests to the beneficiary's work with local community and youth groups. Mr. Katz refers to the beneficiary's participation with D.A.R.E. and other community outreach activities.

The regulations specifically and unambiguously reference *artistic* exhibitions and showcases. Thus, we concur with the director's initial conclusion that this criterion is not applicable to the beneficiary's field. Moreover, we

do not find that volunteering one's time in providing baseball instruction and other activities unrelated to baseball, such as D.A.R.E. is remotely comparable to participation in the type of exclusive artistic exhibitions or showcases that might qualify a visual artist for this criterion.

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

Counsel asserts that the beneficiary meets this criterion due to his playing with the Montreal Expos and his current manager position with a Class A minor league team affiliated with the petitioning club. Mr. Lieppman states:

> [The petitioning] organization is committed to building a championship major league team through development of players from within our minor league system. For us, managers such as [the beneficiary] are essential. [He] has already played an important role in our development program with his teaching and guidance of many of our young stars. . . .
>
> [The beneficiary] has established himself as superior judge of baseball talent and his opinions are highly regarded within this organization, particularly with respect to decisions to promote players to higher levels of competition.

In response to the director's request for additional documentation regarding this criterion, counsel noted that the petitioning club is one of only 30 professional baseball clubs and that any manager for such a team must possess a solid foundation of the game, demonstrated by talent as a player. The director appears to have concluded that the beneficiary did not meet this criterion based on his failure to play for a major league team.

We concur with the director that the record does not establish that the beneficiary actually played in any season games with the Expos. Regardless, as stated in the federal register, quoted above, playing on a major league team is not sufficient. To meet this criterion, the petitioner would need to demonstrate that the position for which the beneficiary was chosen is a critical or leading role. The record does not indicate that the beneficiary was chosen to fill a uniquely critical or leading role for the Expos. Moreover, the beneficiary's time with the Expos is not relevant to his claimed acclaim as a manager.

Regarding the beneficiary's current position with the petitioning club, we are not convinced that every Class A minor league manager plays a leading or critical role for the major league club with which he is affiliated. We note that both Class AA and Class AAA minor league teams are more prestigious than Class A and rookie teams. If playing for a major league team is not in and of itself sufficient, as indicated in the Federal Register, then work for a minor league team, especially a lower level minor league team, is clearly insufficient.

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

At no time did the petitioner or counsel assert that the beneficiary meets this criterion. Nevertheless, the director concluded that the beneficiary's salary of $44,000 as listed on the petition was not consistent with the claim that the beneficiary is one of the very few at the top of the field. While we are sympathetic to the director's conclusion that the beneficiary's salary is not consistent with his claimed leading or critical role and general national acclaim, we concur with counsel that this criterion is not required if an alien meets three other criteria.

The director, however, did not conclude that the beneficiary meets three other criteria and we do not find that the beneficiary meets three other criteria. Thus, any implication by the director that failure to meet this criterion precludes eligibility is not reversible error.

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 himself as a baseball manager 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 beneficiary shows talent as a baseball manager, but is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field. Therefore, the beneficiary 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.