



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date: OCT 14 2004

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)

ON BEHALF OF PETITIONER:

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.

*for* Robert P. Wiemann, Director  
Administrative Appeals Office

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invasion of personal privacy**

**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 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. The director acknowledged that the petitioner had attained national or international acclaim as a competitor, but determined she had not sustained that acclaim in the realm of coaching.

On appeal, counsel submits a brief that repeats, nearly verbatim, the language in the brief submitted in response to the director's request for additional evidence. While the director thoroughly considered the assertions therein in his final decision and identified several deficiencies in the record that needed to be overcome, counsel does not address the director's ultimate decision at all. The petitioner submits evidence of an offer to jointly run a "summer residency camp" coordinated by [REDACTED] Acting Women's National Team Coach at the U.S. Field Hockey Association (USFHA). This offer is dated after the petition was filed and is not evidence of the petitioner's acclaim prior to that date.<sup>1</sup>

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 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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a field hockey coach. 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

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<sup>1</sup> A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 is the recipient of two Olympic gold medals in field hockey, in 1996 and 2000. Thus, we concur with the director that the petitioner has established international acclaim as an athlete.

8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner, however, intends to work as a coach in the United States. While a field hockey player and a coach certainly share knowledge of field hockey, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching 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, as noted by counsel and acknowledged by the director,<sup>2</sup> recently this office has recognized, in nonprecedent cases, that there exists a nexus between playing and coaching a given sport. 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 such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. First, we will consider, as did the director, whether, as claimed by counsel, the petitioner meets three criteria as a coach. If not, we will consider, as did the director, the level at which she had successfully coached as of the date of filing.

The petitioner has submitted evidence that, she claims, 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.*

At the time of filing the petition, October 1, 2003, the petitioner had been serving as the assistant field hockey coach for Ohio State University (OSU) since August 2002. In response to the director's request for additional documentation, the petitioner submitted a letter from ██████████ President of the U.S. Field Hockey Association (USFHA). Ms. ██████████ asserts that the petitioner helped the Ohio Buckeyes finish 15<sup>th</sup> in the Fall 2003 season. ██████████ Head Coach at OSU, confirms this information. The director concluded that serving as an assistant coach for a team that finishes 15<sup>th</sup> is insufficient to meet this criterion.

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<sup>2</sup> By submitting the same brief on appeal, counsel implies that the director failed to concede any relevance to the petitioner's athletic medals. The director, however, did apply the test proposed by counsel and found that the petitioner had not established that she meets this test.

On appeal, counsel simply reiterates the claim that the petitioner meets this criterion. We concur with the director. While a coach can rely on the awards or prizes won by those she coaches as comparable evidence to meet this criterion under 8 C.F.R. § 204.5(h), a 15<sup>th</sup> place finish is not an award or prize. Moreover, when considering evidence under 8 C.F.R. § 204.5(h), we must determine whether the evidence is truly comparable. The petitioner has not established that serving as an assistant coach for a winning team is comparable to winning a prize or award oneself.

*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 response to the director's request for additional documentation, the petitioner submitted the abovementioned letter, dated April 9, 2004, from Ms. [REDACTED] Ms. [REDACTED] states, "[t]his past year we selected her to coach at our 'A Camp[,] the selection camp for the U.S. National Under 21 and Under 19 teams." Ms. [REDACTED] asserts that in this position, the petitioner "served as a judge of the abilities of others at the highest level." The director concluded that all of the petitioner's judging responsibilities were inherent to the position of coach. On appeal, counsel reiterates his previous assertion in response to the director's request for additional documentation.

We concur with the director that duties inherent to one's occupation cannot be serve to meet this criterion. We find, however, that the petitioner's selection to coach at an A-Camp is potentially beyond the typical job duties of a coach, although the record contains no evidence regarding the significance of this camp. More significantly, it is not clear from Ms. [REDACTED] letter that the petitioner served as a coach at A-Camp prior to the date of filing the petition. Thus, we cannot consider this experience for any purpose. Regardless, whether or not the petitioner meets this criterion, it is only one criterion. For the reasons discussed above and below, the petitioner falls short of meeting any of the other criteria as coach.

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

In response to the director's request for additional documentation, counsel asserted that the petitioner had made original contributions to the field by serving as a mentor and role model on the Australian Olympic team. The petitioner submitted letters from teammates and coaches attesting to her assistance in developing the skills of her teammates. Ms. [REDACTED] also asserted that the petitioner provided ideas that were considered by the USFHA board, impacting the sport "at the national level." The director concluded that the petitioner's interactions with her teammates and the USFHA board did not rise to the level of a contribution of major significance in the field. Counsel does not further address this concern and we concur with the director. The record contains no evidence that the petitioner has influenced the game of field hockey as a whole such as developing an original and influential strategy adopted by several teams.

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

As stated above, the petitioner coached at a USFHA "A-Camp" and served as an assistant coach at OSU. The petitioner's references assert that she also served as assistant coach at Northwestern University and head coach at the Rush Field Hockey Club in San Diego, California, St. Mary's Ladies College in Perth, Australia, and Kambalda Ladies College in Sydney, Australia. The record does not contain any letters from officials at these

The director concluded that the record lacked evidence regarding the reputation of the A-Camp and OSU and evidence that the petitioner's role with these organizations was leading or critical. On appeal, counsel does not specifically address the director's concerns. Rather, counsel reiterates the petitioner's past positions, asserting that her ideas were well received at the A-Camp.

The relevant determination under this criterion is the nature of the position the petitioner was hired to fill, not her contributions in that role, considered above. Clearly, USFHA has a distinguished reputation. The petitioner has not established, however, that the position of A-Camp coach is a leading or critical role for USFHA as a whole. Similarly, while OSU may be a Big 10 school, the petitioner has not established that its field hockey team, with a 15<sup>th</sup> place finish, enjoys a distinguished reputation on its own. Nor has the petitioner demonstrated that the position of assistant coach is a leading or critical role for OSU as a whole.

In light of the above, we concur with the director that the petitioner does not meet at least three criteria as a coach. In evaluating whether the petitioner's coaching experience reflects that coaching is within her area of expertise as an athlete, the director correctly noted that decisions from this office discussing a nexus between athletic competition and coaching are not binding on the director or, in fact, this office. Nevertheless, the director did consider the reasoning in those decisions and considered the petitioner's coaching experience in light of those decisions. We will consider that discussion now.

The director stated:

The petitioner has not provided evidence establishing her service and claimed success as a coach at either St. Mary's Ladies College or at Kambalda Ladies' College. Further, the beneficiary has served as an assistant coach at Northwestern University and Ohio State University, not as head coach. There is a major distinction between these two roles. Finally, the petitioner has not provided evidence establishing the level of play undertaken by the Rush Field Hockey Club, St. Mary's Ladies College or Kambalda Ladies' College, nor has she submitted evidence establishing her success at these institutions.

We find the above statements to be an accurate evaluation of the evidence of record. Counsel does not address these concerns, submit the evidence deemed lacking, or explain why the director erred in requiring such evidence.

In considering whether the petitioner's area of expertise includes coaching, we acknowledge the indisputable nature of the petitioner's acclaim as an athlete, winning two Olympic gold medals in consecutive games and the recent nature of the petitioner's acclaim as an athlete as positive factors. Serving as an assistant coach at the national level is less persuasive than serving as a head coach, although we do not entirely disregard that the petitioner was hired as an assistant coach at a Big 10 school, and is not merely working with young children at a local recreational club. Regarding the petitioner's former student, the petitioner has not established that she was currently coaching the student at the time of acceptance onto the national team. We acknowledge the petitioner's selection to coach at the USFHA A-Camp, however, as stated by the director, the record includes no evidence establishing the reputation of A-Camp. Regardless, as stated above, the petitioner has not established that she coached at A-Camp prior to filing the petition in October 2003.

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 herself as a field 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 petitioner has received acclaim as an athlete, shows talent as a coach, but is not persuasive that the petitioner's coaching 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.