

identifying data deleted to
prevent unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MAR 25 2005

FILE: WAC 02 202 50607 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 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 determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability or that the petitioner was coming to the United States to continue work in his area of expertise.

On appeal, counsel asserts that the director failed to consider all of the evidence. The petitioner, through counsel, submits a new reference letter and a job offer.

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 he 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 professional basketball player. 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.

In his conclusion, the director stated that meeting three criteria does not necessarily mean that the alien has achieved sustained national or international acclaim. While we disagree with the phrasing of this statement, we do not read it to mean that an alien can qualify under the regulations and still not establish eligibility. A more rational interpretation of the director's decision is that the submission of documentation that relates to or addresses three criteria is insufficient if that the evidence itself is not indicative of or consistent with national or international acclaim. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim. The petitioner has submitted evidence that, he claims, meets the following criteria.¹

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

The petitioner was a second round draft choice for the Houston Rockets in 1993. The court in *Russell v. INS*, 2001 WL 11055 *4 (N.D. Ill. Jan. 4, 2001), did not dispute the Administrative Appeals Office's conclusion that draft position is an "implausibly broad interpretation" of the term "award." We reaffirm that conclusion.

The petitioner was a rookie on the Houston Rockets for the 1993-1994 season in which the Rockets won the NBA championship. The director discounted this achievement as a team award. Basketball, however, is a team sport. Thus, we will credit the petitioner with this nationally recognized award. The championship, however, was in 1994, eight years prior to the filing date of the petition. A petitioner must establish sustained acclaim up to the time of filing. Although the petitioner submitted incomplete translations of the Spanish newspaper articles purportedly reporting his team's victory in the Euroleague Korach Cup, the director appears to have been capable of translating some of these articles. The director did not question that the petitioner's team won this cup; rather, the director concluded that the newspaper articles failed to meet the published materials criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii). While we are under no obligation to do so, we have verified the petitioner's Korach Cup win via the Internet, although we were unable to verify the significance of this tournament. Without full and complete translations of the articles relating to the Korach Cup and official information about the cup from its organizers, we cannot determine whether the cup is a national or international recognized award or prize. Specifically, the record lacks evidence that this league represents competition among teams in the highest league of professional basketball in Spain and Europe (equivalent to our major league) as opposed to a secondary level of professional basketball equivalent to our minor leagues.

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.

On appeal, the petitioner submits a letter from [REDACTED] who asserts the petitioner's membership on the Houston Rockets team as a second round draft choice the year they won the NBA championship constitutes membership in an organization that requires outstanding achievements of their members pursuant to 8 C.F.R. § 204.5(h)(3)(ii). 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

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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 petitioner's rookie membership on a U.S. major league team is insufficient. The record contains no evidence that the petitioner played for an All-Star team or Olympic team. Similarly, even the petitioner's senior status on foreign teams is insufficient as playing in a major league is not automatic evidence of national or international acclaim. Moreover, the petitioner has not adequately established that the petitioner's Spanish team, Unicaja, was a major league team in Spain.

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 director concluded that the published material submitted was not primarily about the petitioner and that the petitioner had not established that the articles appeared in major media. The director noted the lack of complete translations.

On appeal, the petitioner fails to provide complete translations or additional information about the publications that have covered the petitioner other than the unsupported assertions of Mr. [REDACTED]. While we are under no obligation to do so, we have verified counsel's assertion that *La Gazzetta dello Sport* is a major national Italian sports magazine. Complete translations would have assisted in determining whether any of the articles are primarily about the petitioner. Nevertheless, the December 19, 1995 article in *La Gazzetta dello Sport*, described by the petitioner as a personal interview, contains the petitioner's name in the headline and throughout the article. While insufficient by themselves, we note that the record contains other interviews with the petitioner in local newspapers in 1997 and articles that single out his performance as late as 2001. The petitioner did not comply with 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3) as he failed to submit full and complete translations. Without more, we cannot conclude that the petitioner meets this criterion. Even if we were to conclude that the petitioner meets this criterion, it is only one criterion. A petitioner must meet three to establish eligibility.

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

On appeal, Mr. Walton asserts that the petitioner played a leading and critical role on the teams for which he played pursuant to 8 C.F.R. § 204.5(h)(3)(viii). The petitioner played 22 games as a rookie for the Houston Rockets. We cannot conclude this record constitutes a leading or critical role for this team. While the media occasionally singled out the petitioner's performance with Unicaja, the record contains no evidence that he received recognition as a most valuable player of the year for this team or that compares his performance with other centers in Spain. For example, the record does not contain the statistics of other centers in Spain's major league basketball teams. See *Russell v. INS*, 2001 WL 11055 at *4, n. 6, for the general proposition that a petitioner may be compared with other players in his position, including those on other teams, for this criterion. The petitioner's salary with Unicaja will be considered below.

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

In his notice of intent to deny, the director concluded that the petitioner's contract with Unicaja was not signed by a representative of the club. The contract, however, is signed by a representative of the club, it is missing an agent's signature. Regardless, in response to the director's notice of intent to deny, the petitioner submitted a letter from the club affirming that the petitioner was one of three players on the team paid the highest salary offered by this team. The director did not address this criterion in his final decision.

As stated above, the lack of translations of the Spanish and other foreign news articles and lack of official information from Unicaja and its league precludes a determination as to whether that team is within Spain's highest professional basketball league. Moreover, the record does not establish the salaries paid to players by other Spanish teams. Thus, the petitioner has not demonstrated that his salary is comparatively high among all Spanish basketball players, including those on other professional teams.

The second issue to be addressed is whether the petitioner seeks to enter the United States to continue working in his area of expertise. The regulation at 8 C.F.R. § 204.5(h) requires the alien to "continue work in the area of expertise." The petitioner initially indicated that he intended to continue his "remarkable career as a star basketball player at the Center position, and thereafter serve as a European Scout for an NBA team, as well as run an instructional camp for young American players who aspire to play the Center position at the collegiate and professional levels."

While no job offer is required, the regulation at 8 C.F.R. § 204.5(h)(5) requires the submission of evidence that the petitioner is coming to the United States to continue work in the area of expertise. Such evidence may include letters from prospective employers, evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his or her work in the United States. The petitioner's statement that he intends to continue as a basketball star cannot be considered a detailed plan of how he intends to do so. Basketball stars in the United States are generally limited to NBA players. The record contains no evidence that the NBA is interested in the petitioner as a player.

Rather, the petitioner submitted a job offer from [REDACTED] Head Basketball Coach for the University of Georgia Bulldogs. Mr. [REDACTED] states:

[The petitioner] will work on my Golf Tournament for my former basketball players and my current colleagues in the spring, he will work in my summer basketball camp, work with our centers and forwards during the off season, teaching them the game, he will work at my Basketball Clinic in the fall and will scout overseas talent for our team.

The director concluded that these duties were insufficiently related to the evidence of the petitioner's accomplishments as a basketball player. On appeal, counsel asserts that the director failed to consider a job offer from Brad Wright, Head Basketball Coach for Pierce College. The offer is for a position as an assistant basketball coach.

While a basketball player and a coach certainly share knowledge of basketball, 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, [REDACTED] 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 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.

The petitioner, however, has not demonstrated any experience coaching or scouting at any level. Thus, even if we were to conclude that the petitioner meets three of the regulatory criteria discussed above, the petition would not be approvable.

Review of the record, however, does not establish that the petitioner has distinguished himself as a professional basketball player 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 professional basketball player, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Review of the record also does not establish that the petitioner will continue as a basketball player in the United States or that coaching or scouting is within his area of expertise. 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.