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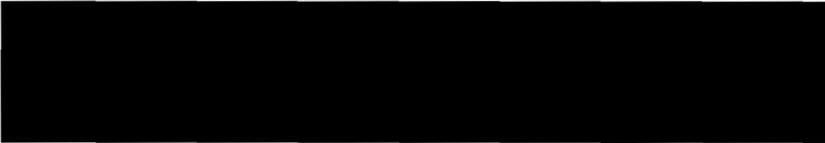
Date: JUL 25 2007

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.

*Naura O'Connell*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” 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 requisite national or international acclaim.

On appeal, counsel submits a brief and additional evidence that postdates the filing of the petition. While some of the director’s concerns are valid and not all of counsel’s assertions are persuasive, we are satisfied that the petitioner has demonstrated that the beneficiary is eligible for the classification sought. While our finding must be and is based on the regulatory criteria, our finding is also consistent with the fact that the beneficiary has been and will be working at the highest level in the United States, as opposed to coaching junior athletes at a local club.

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 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.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a badminton coach. We note that badminton has been an Olympic sport since 1992. 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 beneficiary has in fact met three of the necessary criteria.

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

The majority of the evidence supports this criterion. On December 17, 2004 the petitioner, the governing body of badminton in the United States located at the Olympic Training Complex in Colorado Springs, appointed the beneficiary as its Director of Coaching, effective January 1, 2005. The beneficiary also serves as the Development Consultant for Pan-America at the International Badminton Federation (IBF). On December 22, 2003, the Pan American Badminton Confederation (PABC) appointed the beneficiary as their Itinerant Coach. Prior to that, the beneficiary was the Development Officer for the Asian Badminton Confederation (ABC). In this position, the beneficiary and fellow Development Officer Venu Gopalmahalingam prepared training materials and conducted courses for senior coaches in member countries. In 1992, the Badminton Association of Malaysia (BAM) appointed the beneficiary as its Performance Director. The beneficiary reported directly to the Secretary General and was responsible for program development, planning training, competition, completing coach and athlete performance appraisals and making periodic reports to the Secretary General.

The director concluded:

While the record contains some letters from representatives of [the organizations where the beneficiary has worked], most provide only a brief, general overview of the beneficiary's work, and none clearly detail the beneficiary's role within the overall organization. The record lacks evidence as to how the beneficiary's role was leading or critical within any of the organizations.

On appeal, counsel merely asserts that the director's conclusion reflects a lack of knowledge about international sports. It is the petitioner's burden to demonstrate the alien's eligibility, not the director's responsibility to be knowledgeable about every field. That said, the director appears to have applied too strict a standard regarding this criterion. At issue are the nature of the position the alien was hired to fill and the prestige of the organization that hired him. This criterion does not require an evaluation

of what contributions the beneficiary made while in a particular position. Such evidence is more relevant to the criterion at 8 C.F.R. § 204.5(h)(3)(v).

The above associations are all national or international authorities in badminton focused on improving badminton coaching on either the national or international level. We are satisfied that they enjoy a distinguished reputation nationally. Moreover, the beneficiary did not simply serve as one of several coaches. Rather, he was responsible for developing coaching and coach training programs. Based on the job titles, the person to whom the beneficiary reported and the beneficiary's duties, we are satisfied that the positions the beneficiary was hired to fill were leading or critical for the associations. Thus, we are persuaded that the beneficiary meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The beneficiary authored several coaching manuals and development plans for the petitioner, PABC, BAM, OBC and ABC. The director concluded that these materials had not been published in professional or major trade publications or other major media. On appeal, counsel asserts that this finding "totally ignores . . . the supporting letters from the various organizations which mention his works." Evidence that the scholarly articles appeared in professional or major trade publications or other major media should be apparent from the article itself. We concur with the director that internal development plans and unpublished course materials cannot serve to meet this criterion. Also on appeal, the petitioner submits a 2006 article edited by the beneficiary in *Asia Badminton*. This new article postdates the filing of the petition and cannot be considered evidence of eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

While we concur with the director regarding the internal reports and course materials, the director failed to consider the beneficiary's seminar presentations. The regulation at 8 C.F.R. § 204.5(h)(4) allows us to consider comparable evidence (not lesser evidence) where a criterion does not readily apply to the alien's occupation. Unpublished materials are not comparable to published ones even for an occupation for which this criterion is not readily applicable. That said, presentations at major seminars and conferences are comparable. Moreover, presenting one's work at a major seminar or conference is not inherent to the occupation of badminton coach. Thus, we find that the beneficiary's presentations may serve to meet this criterion.

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

The beneficiary has presented reference letters from the top experts in badminton around the world. More significantly, as discussed above, the beneficiary is the creator or co-creator of development plans and coaching course materials for major international associations that aim to improve badminton coaching through training better badminton coaches. The beneficiary has personally trained top-level

coaches around the world. The beneficiary's work would appear to have impacted badminton coaches all over the world at the highest levels. Thus, we are persuaded that the beneficiary meets this criterion.

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. The petitioner has established that his entry into the United States will substantially benefit prospectively 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.