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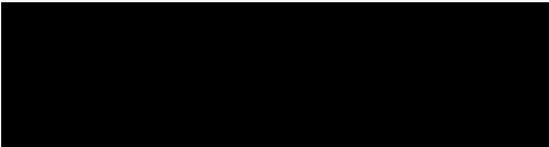


FILE: WAC 04 171 52066 Office: CALIFORNIA SERVICE CENTER Date: MAY 17 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.

Mari Plusa

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a badminton club. The beneficiary is a badminton competitor and instructor. The beneficiary in this matter is a 22-year old native of the People's Republic of China and citizen of Singapore. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her in the United States as a badminton player for a period of three years at an annual salary of \$35,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is an athlete of extraordinary ability and is one of a small percentage who have risen to the very top of her field of endeavor.

On appeal, counsel for the petitioner submits a brief and additional evidence.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

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 arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). 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. 204.12(o)(3)(iii). 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 badminton player. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines eight 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, it claims, meets the following criteria.¹

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

For criterion number one, the petitioner asserts that the beneficiary satisfies this criterion by virtue of her receipt of the following:

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

- In 2001, the beneficiary won a Gold Medal in Women's Doubles at the [REDACTED]
- In 2001, the beneficiary achieved a world ranking of 12 in the International Badminton Federation (IBF) World Ranking System.
- In 2003, the beneficiary won a Gold Medal at the [REDACTED] held in Vietnam.

The director noted that the gold medal was awarded to the beneficiary's team, rather than to the beneficiary individually. The director further noted that in 2004, the beneficiary's ranking was [REDACTED] in a field of 390 women's ranked singles, and that she ranked [REDACTED] and [REDACTED] with her partners in women's doubles.

On appeal, the petitioner submits a letter from the president of the petitioning organization that states that the International Badminton Federation (IBF) World Ranking System uses the player's performance at a number of IBF-sanctioned tournaments with the past year to determine their current world ranking. He states that the beneficiary's current low world rankings should not be used to penalize her since she did not have much opportunity to participate in the international tournament circuit in the previous year.

The O-1 classification required extensive documentation of sustained acclaim. The beneficiary's world ranking stood at 12 in 2001, 67 in 2003 and dropped to 107 in 2004. This dramatic decline in world ranking is not evidence of sustained acclaim. The beneficiary does not satisfy this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.

The petitioner submitted four articles that address tournament results. The petitioner failed to submit evidence of the circulation of these publications; hence, it failed to establish that this material was published in major media. The beneficiary does not satisfy this criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number seven, the petitioner submitted a letter from Dan Cloppas, the Executive Director of [REDACTED] That indicates that the beneficiary will play an essential role if the petition is approved. He wrote:

[The beneficiary's] interest in playing for the United States and assisting our country's national athletes in training is a truly unique opportunity. Unfortunately, because badminton is still an underdeveloped sport in the United States compared to its popularity in other countries, we do not have an American badminton players anywhere near [the beneficiary's] caliber. [The beneficiary's] assistant to [the petitioning organization] as a player representing the United States and a sparring partner for top U.S. athletes are essential to USA Badminton's development plan for achieving international competitive badminton success in the near future.

The regulation requires that the petitioner establish that the beneficiary has been employed in a critical or essential capacity. It is not enough to state that the beneficiary will serve in such a capacity in the future. The beneficiary does not satisfy this criterion.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.