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Immigration and Naturalization Service

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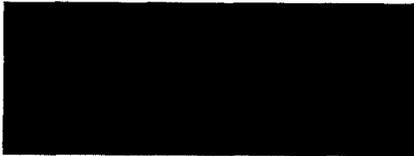


File: LIN-01-187-55052 Office: Nebraska Service Center Date: JUN 19 2002

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

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

IN BEHALF OF PETITIONER:



PHOTOCOPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation operating, in part, tournament-level golf courses. The beneficiary is a professional golfer. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics. The petitioner seeks to employ the beneficiary temporarily in the United States as a golf instructor for a period of three years at an annual salary of \$50,000.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability in athletics which requires sustained national or international acclaim and recognition as being at the very top of the field of endeavor.

On appeal, counsel for the petitioner submitted a written brief arguing that the beneficiary has satisfied the regulatory standard.

Section 101(a)(15)(O)(i) of the Immigration and Nationality 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.

8 C.F.R. 214.2(o)(2)(ii) states that petitions for O aliens shall be accompanied by the following:

(A) The evidence specified in the particular section for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and

(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) 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;

(3) 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;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

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

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is described as a native of South Africa and a citizen of Italy who was last admitted to the United States on January 15, 2001, in B-1 visitor classification. The record reflects that he was a high school and college golfer, has competed in two Master's tournaments, and has competed in other PGA tournaments and in other international tournament circuits. The petitioner is a corporation operating, in part, two "world-class" golf resorts, Whistling Straits and Blackwolf Run.

In denying the petition, the director concluded that the record was insufficient to establish that the beneficiary was an alien with extraordinary ability in athletics or that he sought to enter the United States to continue in the area of extraordinary ability as required by the statute and its implementing regulations. The director concluded that the petitioner failed to establish "extraordinary ability" pursuant to 8 C.F.R. 214.2(o)(3)(ii). The director also found that the record was insufficient to establish that the proposed position of golf instructor at a golf course constituted continuing work in the area of extraordinary ability.

On appeal, counsel argued, in pertinent part, that the beneficiary is "one of the small percentage who have arisen to the very top of the field" pursuant to 8 C.F.R. 214.2(o)(3)(ii). Counsel argued that under a *reasonable-man* standard, the beneficiary is one of 26,000 certified golf professionals of the Professional Golf Association ("PGA") out of 26.7 million golfers in the United States. Counsel argued that this places the beneficiary in the 99th percentile and thereby is "one of a small percentage" at the

top of the field. Counsel argued that the Service is applying an unduly restrictive standard in defining "small percentage" as pertaining only to professional golfers.

The argument is not persuasive. The Service has specifically rejected the proposition that every athlete in a "major league" of a sport, or every athlete at the professional competitive level of an individual sport, has established extraordinary ability as inconsistent with the Congressional intent of the provision. Matter of Price, 20 I&N Dec. 953 (Acting Assoc. Comm. 1994). Merely being a certified member of the PGA is insufficient to establish that an individual has extraordinary ability in athletics within the meaning of section 101(a)(15)(O)(i) of the Act.

Counsel further argued that the beneficiary is a class A-3 member of the PGA authorized to play in the professional tours. Counsel asserted that the beneficiary is one of 445 class A-3 PGA members out of 26,000 PGA certified members which again places the beneficiary in the 99th percentile. Counsel argues that this is sufficient to satisfy the "one of a small percentage" provision.

The argument is not persuasive on the same basis as above. Pursuant to the holding in Matter of Price, *supra*, it must be concluded that not all class A-3 members of the PGA satisfy the standard of extraordinary ability in athletics contemplated by the Act. As discussed in Matter of Price, indicia of extraordinary ability in the sport of golf includes a sustained record of playing in major tournaments and finishing in the top of those tournaments. Other indicia include a sustained history of major media recognition of the athlete, total prize winnings, and testimony from the most prominent names in the sport. While the petitioner submitted, in part, an article from *Sports Illustrated* featuring the beneficiary, the article focused on his unusual story of moving from South Africa to California as a teenager, rather than recognition of his extraordinary ability as a golfer.

Counsel finally argued that the beneficiary uses his extraordinary ability as a golfer in his teaching of the sport and satisfies the "continuing work" standard.

The argument is not persuasive. The regulations are silent on what constitutes "continuing work in the area of extraordinary ability." In the most obvious case, an alien athlete with extraordinary ability seeking to enter the United States for a professional tournament or for a season of the sport would satisfy this provision. In this case, the beneficiary would serve as a golf instructor at a golf resort teaching the sport to recreational players. It must be concluded that this type of activity is inconsistent with the purpose of an O-1 athlete as contemplated in the Act.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for this classification, the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

The denial of this petition is without prejudice to the petitioner pursuing classification of the beneficiary under alternate provisions of the Act.

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.