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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: LIN 01 245 54595 Office: NEBRASKA SERVICE CENTER Date: 16 OCT 2002

IN RE: Petitioner: [redacted]
Beneficiary:

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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, 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 sustained.

The petitioner is a professional basketball team. The beneficiary is a professional basketball player. The petitioner seeks O-1 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, in order to temporarily employ him in the United States as a professional basketball player for a period of three years at a salary of $831,120 per year.

The director denied the petition finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in athletics.

On appeal, counsel for the petitioner submitted a brief and additional documentation.

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

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 petitioner submitted the following documentation with the I-129 petition: a letter from the National Basketball Association (NBA) regarding the nature of the work to be done and the

beneficiary's qualifications; a letter from the petitioner in support of the petition; a copy of a written contract between the petitioner and the alien beneficiary; a copy of the petitioner's preseason schedule and itinerary; and news and magazine articles citing the beneficiary's performance.

The petitioner also furnished a consultation from the NBA, an association of 29 member clubs, stating that they support the petition for the beneficiary as an alien of extraordinary ability.

The director found that although the beneficiary's amateur accolades were impressive, they did not establish that the beneficiary was or will be an individual of extraordinary ability at the professional level. The director found that the testimonials on the record indicate that the beneficiary was expected to excel at the professional level, but none of the documents indicated that the beneficiary was among the small percentage of professional basketball players who had risen to the very top of their field in the NBA. The director said:

> The beneficiary has yet to play a professional basketball game in the NBA and is in the early stage of his career as a professional basketball player. While this career is admittedly promising, review of the comprehensive filing does not support a conclusion that the beneficiary is acknowledged as one of a small percentage who has risen to the very top of the field of professional sports.

On appeal, counsel asserts that it was an abuse of discretion for the Service to determine that the beneficiary does not qualify as an O-1 alien of extraordinary ability in athletics.

There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). However, the record is persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

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

The beneficiary was voted the most valuable player in five different tournaments, including the European Junior Championship in 1997. He was selected as a member of the 1998-1999 Russian League All-Star Team and was named the European Player of the Year for 2000-2001.

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 field

The beneficiary was a member of the 1998-1999 Russian League All-Star Team, and a member of the 2000 Russian Olympic Team at the Summer Olympics in Sydney, Australia. Both teams require outstanding achievements of their members.

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

The petitioner submitted numerous published materials from major media relating to the beneficiary's acclaimed athletic performance. Much of the material publicized the beneficiary's awards (voted top young player in Europe, voted most valuable player) and performance (top player during the Utah Jazz' rookie/free agent camp and the subsequent Rocky Mountain Revue Summer League).

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

Media reports demonstrate that the beneficiary has played a critical role or in an essential capacity for numerous basketball teams with distinguished reputations. He led his team (CSKA) to the Russian National Championship and to the NEBI (European Basketball League) Title. He was selected as the Most Valuable Player of the European Junior Championship tournament. He was selected to play on the 2000 Russian Olympic Team where he saw action in all seven games (3 starts), averaging 9.4 points, second-best on the team.

Furthermore, the record is persuasive that the position of playing professional basketball would involve continuing work in the area of 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 met that burden.

ORDER: The appeal is sustained.