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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



FILE: WAC 03 141 53951 Office: CALIFORNIA SERVICE CENTER Date: **DEC 17 2003**

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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
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 non-profit organization that offers programs and services to children. The petitioner seeks extension of the beneficiary's stay in the United States in O-1 classification, 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 him in the United States as a tennis coach for a period of three years at an annual salary of \$50,000. The beneficiary was approved for O-1 classification by a former employer.

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

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

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.

The regulation at 8 C.F.R. § 214.2(o)(1)(ii)(1) requires the beneficiary to "continue work in the area of extraordinary ability." The beneficiary intends to work as a tennis coach in the United States. While a tennis player and a coach certainly share knowledge of tennis, 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, Lee's 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.

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 in this matter is a 28-year old native and citizen of Australia. According to the evidence on the record, the beneficiary last entered the United States on May 30, 2001 as an O-1 alien of extraordinary ability and departed on December 7, 2001.

The director noted that much of the record focuses on the beneficiary's achievements as a tennis player at the junior and collegiate level. The director concluded that the evidence does not establish that the beneficiary has sustained acclaim as a tennis coach.

On appeal, counsel asserts that the beneficiary satisfies at least three of the eight criteria set out in 8 C.F.R. § 214.2(o)(iii)(B). Counsel further asserts that the testimonials provided to CIS are comparable evidence of the alien's extraordinary ability. Counsel argues that the director abused his discretion by denying the petition on grounds that the director failed to mention in his request for additional evidence. Finally, counsel asserts that the director erred by requiring the petitioner to establish that the beneficiary had sustained acclaim as a coach. Counsel argues that it is enough to show that the beneficiary sustained acclaim in the general field of tennis.

Before CIS will accept comparable evidence, the petitioner must show that the criteria in the regulation at 8 C.F.R. § 214.2(o)(3)(iii) do not readily apply to the beneficiary's occupation. The petitioner failed to establish that the criteria do not readily apply to tennis coaches.

The petitioner was given the opportunity to respond to the director's reasons for denial on appeal; therefore, counsel's assertion that it was an abuse of discretion to fail to raise those issues in the request for additional evidence is unpersuasive.

On appeal, counsel for the petitioner asserts that the beneficiary, an accomplished tennis player, can establish eligibility for O-1 classification as a tennis coach because his field of endeavor is tennis. Counsel further asserts that CIS is bound by the opinion of Efren Hernandez, Adjudications Office, which reiterates this position. Letters written by the Office of Adjudications do not constitute official CIS policy and are not binding on any CIS officer. Memorandum from Thomas Cook, Acting Assistant Commissioner, Office of Programs, Immigration and Naturalization Service, *Significance of Letters Drafted by the Office of Adjudications*, (December 7, 2000) (copy in the record).

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 the field of endeavor.

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). Nor is the record persuasive in demonstrating that the beneficiary meets at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner asserts that the beneficiary was "ranked as high as No. 2 in the nation in 1996 in doubles." The beneficiary and a partner on the University of Nevada, Las Vegas tennis team won the National Collegiate Athletic Association (NCAA) Division I men's doubles title. The Nevada state legislature recognized the beneficiary and his teammates after they won the NCAA title. In the years 1985 through 1993, the beneficiary won numerous tournaments in Australia, and was ranked sixth at the Australian Masters Competition. In review, the petitioner failed to establish that these are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. It is noted that the beneficiary competed with other students for these awards, rather than top-ranked professionals in the field. The beneficiary does not satisfy this criterion.

For criterion number two, the petitioner asserts that the beneficiary was a member of the University of Nevada Las Vegas (UNLV) tennis team, which requires outstanding achievements in tennis. The petitioner failed to establish that the UNLV tennis team requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The beneficiary does not satisfy this criterion.

For criterion number three, the record contains evidence of published material about the alien relating to the alien's work in his field of endeavor. The names of some of the articles are as follows:

"Time Grabs Colgate Cup Title."

"State Trio Set the Standard."
"Boys in National Tennis Squad."
"Career Boost for Tim."
"Memorial Drive has Edge over Prospect."
"Tim Takes Tennis Seriously."

The petitioner failed to list the title and date of publication for the above-captioned articles as required by the regulation so they cannot be considered.

The petitioner submitted five articles that were published in the *Las Vegas Review-Journal* in 1997 and 1998.

The petitioner submitted an article published in *The New York Times*. The article is illegible so it cannot be considered.

The petitioner submitted an article dated June 2, 1997, "Stanford Rules I Men's Tennis," published in the *NCAA News*. The *NCAA News* article is the only item submitted that is published in a professional journal or major trade publication or other major media. While the article names the beneficiary among other winners at Stanford, the article is not about the beneficiary, but primarily about Stanford's success in winning several national titles.

It appears that five years have lapsed since the beneficiary received publicity for his achievements in tennis. The record fails to show that the beneficiary has sustained acclaim in recent years. The record does show that the beneficiary's achievements are limited to the junior or collegiate level. The petitioner failed to establish that the beneficiary satisfies criterion number three.

For criterion number four, the petitioner asserts that the beneficiary satisfies this criterion by virtue of judging the tennis abilities of his students as their coach. The beneficiary's work coaching students does not fit into the category of judging others' work. The beneficiary was merely performing his job. He was not selected to judge others' work on the basis of his acclaim in his field of endeavor. It is further noted that the beneficiary's coaching experience is limited to teaching at the collegiate level. The beneficiary does not satisfy this criterion.

No evidence was provided in relation to criteria numbers five through eight.

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.