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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



FILE: WAC 02 082 52775

Office: CALIFORNIA SERVICE CENTER

Date:

FEB 28 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)

IN BEHALF OF PETITIONER:



**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.

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 on appeal. The appeal will be dismissed.

The petitioner is a private university. The beneficiary is a former champion collegiate tennis player and is currently the head coach of the men's tennis team for the petitioning organization. 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), in order to continue to employ him in the United States as a "head men's team tennis coach" for a period of three years at an annual salary of \$29,039.92.

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 indicated that she would submit a brief within thirty days of filing the appeal. To date, no brief has been received. Counsel for the petitioner provided additional documentation on appeal.

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.

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 native and citizen of Germany. The record shows that the beneficiary performed well as a tennis athlete during his college years. He earned "All-American" status in singles and doubles at Brunswick College. He was named Georgia College Student Athlete of the year in 1990 and earned the Intercollegiate Tennis Association's Arthur Ashe Sportsmanship Award in 1992. He was considered the Most Valuable Player once and Best Doubles Player twice during his tennis-playing career. According to the record, the beneficiary took a graduate assistant coaching position at Georgia College where he mentored the women's team to its first-ever national ranking. In 1994, the beneficiary became the assistant men's and women's tennis coach at Augusta State University where he mentored both previously unranked squads to consistent top ten NCAA¹ Division II national rankings. The beneficiary worked as an assistant tennis professional at the Newman Tennis Center in Augusta, Georgia from 1994-1997. In 1998, the beneficiary was named head men's tennis coach at the University of the Pacific, the petitioner. In 2001, the beneficiary's team won the Big West Conference Men's Tennis Championship.

On appeal, counsel asserts that the beneficiary satisfies seven of the eight criteria set out in 8 CFR 214.2(o)(iii)(B).

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.

First, 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 has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

In evaluating the evidence addressing the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), the Service must evaluate that evidence in order to determine if the criteria has been satisfied at the level contemplated for O-1 classification.

For criterion number one, the petitioner submitted awards of different categories, including awards won by the beneficiary as a coach, awards won by the beneficiary as a college tennis player, and awards won by the team that the beneficiary coaches. All of these awards may be considered in relation to this criterion. The beneficiary was recognized as Tennis Coach of the Year for the Big West Conference in 2001. The beneficiary received an award for Outstanding Student Athlete at Georgia College (1991-1992). He received an award from the National Junior College Athletic association in 1990 for Third Flight, Division One, Doubles Runners-up. In 1990, the beneficiary was named to the Men's All-

¹ The National Collegiate Athletic Association is a voluntary association of about 1,200 colleges, universities, athletic conferences and sports organizations devoted to the sound administration of intercollegiate athletics.

American Tennis Team of the National Junior College Athletic Association, Brunswick College. The Intercollegiate Tennis Association (ITA) recognized the team that the beneficiary has been coaching since 1998 as the 2001 ITA All-Academic Team. The petitioner explained that this award is given to recognize that the team members maintained a high grade point average while maintaining excellence in sports. The team won the 2001 Big West Conference Men's Tennis Championship. While the evidence on the record indicates that the beneficiary has an impressive history of winning awards, the evidence is insufficient to establish that these are awards that are nationally or internationally recognized awards for excellence in the field of endeavor. The beneficiary does not satisfy this criterion.

For criterion number two, the petitioner provided the Service with a certificate from the ITA.² The certificate was awarded upon completion of a training program. There is no evidence that this association requires outstanding achievements of its members, as judged by recognized national or international experts in their discipline. The record is insufficient to establish that the beneficiary satisfies this criterion.

For criterion number three, the petitioner provided ten news articles. Nine of the ten articles were published in *The Record*.³ The petitioner has not provided any information regarding the circulation or reputation of *The Record*. The petitioner has failed to establish that these articles appeared in professional or major trade publications or major media as required by the regulation. The remaining article was published by *USA Today*. This article primarily demonstrates the dominance of the Stanford University tennis teams, and is not about the beneficiary's work in the field. The director determined that the articles submitted only recognized the beneficiary's achievements on a regional basis and not in the required national or international arena. In review, the articles are not evidence that the beneficiary is one of the very few who has risen to the top of his field.

On appeal, counsel for the petitioner asserts that the beneficiary satisfies criterion number four by virtue of his selection to serve on the NCAA West Region Advisory Committee that assisted in the selection of teams and individuals for the 2002 NCAA Division I Men's Tennis Championships. The petitioner failed to provide evidence that the beneficiary was selected to serve on this Committee due to his national reputation as a tennis coach. The evidence on the record reflects that the beneficiary volunteered to serve on the NCAA committee. The petitioner failed to establish that the beneficiary satisfies this criterion.

For criterion number five, the evidence on the record demonstrates that the team that the beneficiary coaches has improved significantly under the beneficiary's tutelage. Dick Gould,

² The ITA is comprised of 1500 head and assistant coaches of men's and women's tennis programs from NCAA Divisions I, II, III, NAIA and junior colleges and 15,000 student athletes.

³ *The Record* is also referred to as *The Stockton Record*.

Director of Men's Tennis at Stanford University wrote, "during his four seasons at the University of Pacific, the program improved dramatically - from a below-average team to one of national recognition. Under [the beneficiary], the program earned its first-ever bid to the NCAA championships in 2000, and its first-ever Big West Conference Championship in 2001." The director acknowledged the beneficiary's contributions to his field of endeavor, but determined that the significance of his contributions have not been of national or international level [sic]. The standard is not whether the significance of the beneficiary's contributions has been of national or international scope, but rather, whether his original scientific, scholarly, or business-related contributions are of major significance in the field. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

No evidence was submitted in relation to criterion number six.

For criterion number seven, on appeal, counsel asserts that the beneficiary has been employed in a critical or essential capacity for an organization that has a distinguished reputation, i.e., the petitioner. The director determined that the petitioner is a university with a distinguished reputation, but determined that the petitioner's tennis program was ranked 52 out of 300 in the National Collegiate Athletic Association (NCAA) in 2000; therefore, the petitioner has not been recognized as an organization with a distinguished reputation in the given field of endeavor. The director's determination is correct. When a beneficiary works for a large organization such as a university, and the petitioner claims that the beneficiary has a leading role in one department, it would be necessary to establish that the department, in this instance, the athletic department, has a distinguished reputation. The beneficiary does not satisfy this criterion.

As evidence that the beneficiary commands a high salary, the petitioner provided the Service with a salary survey limited to NCAA Division I AAA head men's team coaches. According to that survey, the average annual salary for head men's tennis coaches ranges between \$20,857 and \$25,142. The petitioner has offered to pay the beneficiary \$29,039.92 in annual wages. The director determined that the more appropriate survey encompasses coaches and scouts for universities. This portion of the director's decision shall be withdrawn. The more appropriate salary survey would encompass salaries of all college tennis coaches, rather than just one division of the NCAA. The petitioner failed to establish that the beneficiary satisfies this criterion.

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.