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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: SRC 02 133 51561 Office: TEXAS SERVICE CENTER

Date: JAN 06 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:



PUBLIC COPY

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a tennis academy. The beneficiary is a former champion tennis player and is now a tennis coach. 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), in order to continue to employ him in the United States as a "head assistant tennis professional" tasked with providing tennis instruction for a period of one year at an annual salary of \$30,000.

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 CFR 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 CFR 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 CFR 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 Sweden.

The record shows that the beneficiary was consistently ranked in the top ten in Sweden as a junior player between 1979 and 1986. While attending the University of Texas at El Paso, the beneficiary distinguished himself as an "All Western Athletic Conference performer." The beneficiary has been employed by the petitioner since May of 1996.

The director noted that much of the record focuses on the beneficiary's achievements during his teen years in Sweden and his college years in El Paso. The director concluded that the evidence does not establish that the beneficiary has sustained acclaim as a tennis teacher.

On appeal, counsel asserts that the beneficiary satisfies at least three of the eight criteria set out in 8 CFR 214.2(o)(3)(iii)(B). Counsel argues that the Service determined that the beneficiary satisfied criterion number six in a request for additional documentation dated June 4, 2002. Counsel asserts that the director found that the beneficiary met criterion number one in its decision. Counsel argues that the beneficiary also satisfies criteria numbers two and seven.

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 as a tennis coach in athletics.

First, there is no evidence that the beneficiary has received an award equivalent to that listed at 8 CFR 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 CFR 214.2(o)(3)(iii)(B).

In evaluating evidence addressing the eight criteria at 8 CFR 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.

The director determined that the beneficiary meets criterion number one. While the AAO concurs that the beneficiary received national awards as a young tennis player in Sweden, there is no documentation that the beneficiary has sustained acclaim as a tennis player since that time. Further, the petitioner has not submitted evidence that the beneficiary has received prizes or awards as a tennis coach, or that the players he has coached have received significant recognition in the field of tennis.

For criterion number two, while the beneficiary is a member of the United States Tennis Association (USTA), an association of tennis teaching professionals, there is no evidence that this association requires outstanding achievements of its members, as judged by recognized national or international experts in their discipline. Counsel asserts that because the beneficiary achieved the "Professional One rating", the highest rating possible from the USTA, the beneficiary satisfies this criterion. The record shows

that the USTA has a membership of 12,500. The record is silent as to what percentage of USTA members have achieved this rating. The record is insufficient to establish that the beneficiary satisfies this criterion.

Although the record contains evidence of published material in major media about the alien relating to the alien's work in his field of endeavor, the material is quite dated. The material was published in June 1980, November 1981, March 1982, June 1982 and February 1986. It appears that sixteen 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 petitioner failed to establish that the beneficiary satisfied criterion number three.

No evidence was provided in relation to criteria numbers four and five.

Counsel asserts that the director determined that the beneficiary satisfied criterion number six in his request for additional documentation. On review, it is apparent that counsel is relying upon a typographical error in the June 4, 2002 request for additional documentation as "proof" that the director determined that the beneficiary satisfies criterion number six. The record is devoid of any evidence that the beneficiary has authored scholarly articles in the field, in professional journals, or other major media.

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. Counsel states that the beneficiary was "instrumental in the success of many juniors who became national champions, state champions, and players who represented the United States in international competition."

Counsel's argument is not persuasive. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner failed to provide sufficient evidence that the beneficiary in fact has been employed in an essential capacity and that he has been instrumental in the success of many young tennis champions.

No evidence was provided in relation to criterion number 8.

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.