

Prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D8



FILE: LIN 04 184 52913 Office: NEBRASKA SERVICE CENTER Date: AUG 17 2005

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

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 of the Administrative Appeals Office 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.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, the Eau Claire YMCA, 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), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him in the United States as its head tennis professional for a period of two years at an annual salary of approximately \$40,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is an alien with extraordinary ability as a tennis professional.

On appeal, counsel for the petitioner submits additional evidence.

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)(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.

The regulation at 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.

The beneficiary in this matter is a 40-year old Canadian citizen. The evidence on the record indicates that the beneficiary previously entered the United States as a nonimmigrant student.

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 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.

For criterion number one, the petitioner submitted a letter written by the president of the Kuwait Tennis Federation, which states that in 1994 the Federation "awarded [the beneficiary] a National distinction award for his excellent work both in teaching tennis and operating first-rate national level tennis competitions."

In review, the petitioner has failed to establish the significance of this award. The beneficiary does not satisfy this criterion.

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.

For criterion number two, the petitioner asserts that the beneficiary's membership in the Professional Tennis Registry (PTR), and the United States Professional Tennis Association (USPTA) satisfies this criterion. The director determined that the petitioner failed to establish that these organizations require outstanding achievements of their members, as judged by recognized national or international experts in their field of endeavor. The AAO concurs. According to the evidence on the record, both the PTR and USPTA are certification entities. Although the beneficiary has been certified at the highest level by both associations, the record does not show that membership is predicated on outstanding achievements, as judged by recognized national or international experts in tennis instruction. The beneficiary does not satisfy this criterion.

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.

For criterion number four, the petitioner submitted evidence that the beneficiary has instructed and developed students and instructors in tennis. As a tennis instructor, the beneficiary was merely performing his job. The record fails to show that the beneficiary was selected to judge the work of others on the basis of his acclaim. The beneficiary does not satisfy this criterion.

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

For criterion number seven, the director determined that the beneficiary satisfies this criterion. This portion of the director's decision shall be withdrawn.

According to the evidence on the record, the beneficiary has most recently been employed as a manager at the Waterloo Tennis Club in Waterloo, Ontario. He spent five years at the Safir International Hotel in Kuwait as Director of Tennis and Interim Recreation Manager. In the summer of 1987, he taught tennis to vacationers in Italy.

The record does not establish that the beneficiary has been employed in a critical or essential capacity for distinguished organizations and establishments. The beneficiary does not satisfy this criterion.

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.

For criterion number eight, the petitioner asserts that the beneficiary commanded a high salary while working in Kuwait. On appeal, the petitioner submitted a wage survey titled "Tennis Pro Compensation Report 2002," that

indicates that the average wage for tennis instructors in the United States' Midwest region was \$42,306. The petitioner compared the beneficiary's annual wage in Kuwait (\$60,000) with the average wage in the U.S. Midwest (\$42,306) and concluded that the beneficiary earned a high salary in relation to other tennis instructors. As the regulations require that the beneficiary have sustained national or international acclaim, to evaluate whether the salary is high, CIS would need a wage survey that specifies the median and highest wages offered nationwide or internationally to tennis instructors. It is not enough to compare the beneficiary's salary with the median or average wage. This criterion must be indicative of the beneficiary's extraordinary achievement. The beneficiary does not satisfy this criterion.

Counsel for the petitioner asserts that the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) do not readily apply to the beneficiary's occupation, and as comparable evidence submits letters written by the petitioner's Tennis Director, which explains the uniqueness of the beneficiary's experience and abilities as compared to the other applicants for the proffered position. In review, this evidence is insufficient, without more, to establish eligibility for this restrictive visa classification, which requires extensive documentation of extraordinary achievement.

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.