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U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 04 058 51676 Office: CALIFORNIA SERVICE CENTER Date: JAN 17 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to 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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The California Service Center Director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a chess club. The beneficiary is a chess player and teacher. 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), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her in the United States as an advanced chess teacher for females for an unspecified period of time at an annual salary of $6,000.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of her field of endeavor.

On appeal, the petitioner submits 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)(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 29-year old native and citizen of Mongolia. The evidence on the record indicates that the beneficiary last entered the United States as a B-1 nonimmigrant alien on September 25, 2003.

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 an instructor or coach in the United States. While a chess player and a chess instructor or coach certainly share knowledge of chess, the two rely on very different sets of basic skills. Thus, competitive chess 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. [redacted] 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. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case, we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated the beneficiary's

extraordinary ability as a coach or as a chess player. If the beneficiary has demonstrated extraordinary ability as a chess player, we will consider the level at which she has successfully coached.

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 chess.

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 meets 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 petitioner alleges that the beneficiary satisfies this criterion based on her receipt of the "National Master title award from the *Mongolian Chess Federation*" and the "International Master Title award from the *World Chess Federation* (FIDE)."

The record contains a September 10, 2003 letter from the secretary general and FIDE delegate of the Mongolian Chess Federation, which states:

> [The beneficiary's] biggest achievements as chess sportswoman are as following:
>
> - National Girls championship: gold medal-1992 and 1994; silver medal-1991 and 1993; bronze medal-1989
> - World Youth Championship: Germany 1992 and Hungary 1994
> - Asian Junior Championship: Malaysia 1994, price [sic]
> - World Junior Championship: Germany 1995; price and Colombia 1996
> - National Women Championship: gold-1998; silver-1994 and 1995; bronze-1991, 1993, 1997, 1999 and 2000
> - Asian Zonal Women championship: Uzbekistan 1995
> - Asian Women team Championship: China 1999
> - World Chess Olympiad: 1994, 1996 and 1998

The petitioner submitted a copy of a 1995 "diploma" from the World Chess Federation (FIDE) "confirming" that the beneficiary had obtained the title of "Woman FIDE Master." The record also contains copies of documents identified by the petitioner as Mongolian National Championship Certificates; however, these documents are not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Furthermore, the petitioner submitted no evidence to establish that the Mongolian National Championships are nationally recognized awards for excellence in the field of chess. A competition or event does not achieve this status simply by identifying itself as a "national" or "international" event.

Additionally, the petitioner submitted no evidence that the beneficiary's status as a FIDE master is a prize or award. Furthermore, as of December 29, 2005, the World Chess Federation does not list the beneficiary

among the top fifty women players, and her rating of 2129, as shown on the documentation submitted by the petitioner, is well below the rating of 2402 for the individual listed as number 50 on the list of best players.[1]

The petitioner has failed to establish that the beneficiary satisfies 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.

The petitioner asserts that the beneficiary satisfies this criterion as she has maintained active membership in the World Chess Federation, U.S. Chess Federation, Mongolian Chess Federation, and the Los Angeles Club. The petitioner submitted no evidence that membership in these organizations is reserved for those of outstanding achievements in the field of chess. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has failed to establish that the beneficiary satisfies this criterion.

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.

On appeal, the petitioner asserts that the beneficiary meets this criterion based on the beneficiary's "published material" in the January/February 2004 and May/June 2004 magazine *Rank & File*, published by the Southern California Chess Federation. We note, first, that the documentation submitted by the petitioner is subsequent to the filing date of the petition and therefore is not relevant in establishing that the beneficiary met this criterion on the date the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Further, the documentation only indicates the results of matches played by the beneficiary and is included among many other results. The documentation submitted are not articles about the beneficiary's work and do not establish that the beneficiary meets this criterion.

The petitioner failed to submit evidence relating to criteria numbers four and five.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

On appeal, the petitioner submits copies of three articles that it states establish that the beneficiary meets this criterion. Although the petitioner states that the articles were published in the *Los Angeles Chess Club Bulletin*, the petitioner submits no evidence of when and where these articles were published. Furthermore, the petitioner submits no evidence that the *Los Angeles Chess Club Bulletin* is a professional journal or is major media in the chess field.

Additionally, the petitioner did not assert and submitted no evidence that the beneficiary met this criterion prior to the appeal. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested

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[1] *See www.fide.com.*

evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The evidence before the director does not establish that the beneficiary satisfies this criterion.

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

According to the petitioner, the beneficiary was employed by the Mongolian Chess Federation as "the Official Chess Instructor of the National Mongolian Women Chess Team." The petitioner submitted no evidence to corroborate this statement. *See Matter of Soffici*, 22 I&N Dec. at 165. We note that this is not one of the significant achievements identified by the secretary general of the Mongolian Chess Federation. Further, the petitioner submitted no evidence that this position was in a critical or essential capacity or that the Mongolian Women Chess Team is an organization with a distinguished reputation. The evidence does not establish that the beneficiary satisfies 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.

The petitioner states that the beneficiary will be hired at a "respectable salary." However, the petitioner submits no evidence that the proffered salary of $6,000 per year is among that paid to the highest compensated chess masters or instructors. The evidence does not establish that the beneficiary satisfies this criterion.

On appeal, the petitioner states that the beneficiary has earned the title of International Master, the second highest title of the World Chess Federation. According to the petitioner, this puts the beneficiary among only four percent who qualify for this title. Nonetheless, the petitioner has not submitted documentary evidence to establish that the beneficiary has achieved sustained acclaim in the field of chess, either as a player or as an instructor.

Beyond the decision of the director, we note that the petitioner has not submitted the mandatory consultation required by the regulation at 8 C.F.R. § 214.2(o)(5)(i)(A), which states, 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 record contains no documentation indicating that the petitioner obtained a consultation in accordance with the above regulation. Without the required consultation, the nonimmigrant visa petition cannot be approved. This deficiency constitutes an additional ground for denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.