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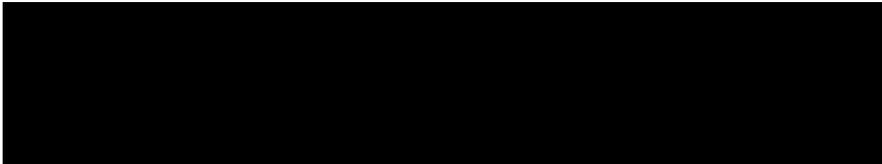
FILE: EAC 04 800 31656 Office: VERMONT SERVICE CENTER Date: JUN 01 2007

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 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.

Laura Deadrick
fe Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner runs summer camps providing tennis instruction. The beneficiary is a tennis player and coach. The petitioner seeks O-1 nonimmigrant 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 a tennis program instructor for a period of three years at an annual salary of \$45,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim as a tennis instructor of extraordinary ability.

On appeal, counsel submits a three-sentence statement. On the Form I-290B, Notice of Appeal, counsel indicated that he would send a brief or evidence to the AAO within 30 days. Counsel dated the appeal September 23, 2005. Over seven months later, the AAO notified counsel that it had received nothing further and requested counsel to submit a copy of any brief or evidence that had been filed as indicated on the Form I-290B. On May 4, 2007, counsel informed the AAO that he did not file a brief or evidence as he stated on the Form I-290B.

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:

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 case is a native and citizen of South Africa who entered the United States on March 31, 2004, as a nonimmigrant visitor (B-2). The record shows that the petitioner competed in national and international tournaments as a tennis player from 1995 through December 2003 and the petitioner states that he began coaching tennis in 2000. The petition seeks to classify the beneficiary as an alien with extraordinary ability as a tennis instructor.

The statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i)

(2007). Competitive athletics and sports instruction are not the same area of expertise and we cannot assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, 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 or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both a tennis player and coach.

The record does not establish that the beneficiary meets any of the evidentiary criteria for O-1 classification. Counsel does not explicitly state which criteria the beneficiary purportedly meets. As there is no evidence that the beneficiary has received a major, internationally recognized award, we discuss the beneficiary's eligibility under each of the remaining 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 submitted a printout of the beneficiary's player biography and activity as recorded on the website of the International Tennis Federation (ITF). The ITF printout shows that the beneficiary won some matches at international competitions, but the record does not indicate that any of the beneficiary's successful matches resulted in his receipt of nationally or internationally recognized prizes or awards for tennis excellence.

The record shows that the beneficiary participated in the 1999 All Africa Games as a member of the South African team, which won the silver medal. However, this single honor, received five years before this petition was filed, does not reflect the requisite sustained acclaim.

The record also contains no evidence that the beneficiary has instructed or coached players who have won national or international tournaments or other nationally or internationally recognized prizes or awards for tennis excellence. Accordingly, the beneficiary does not meet 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 beneficiary's resume states that he was a member of the South African Davis Cup team in the Czech Republic and Belarus in 2000 and the United Kingdom in 2001. Several of the recommendation letters also note the beneficiary's participation on the South African Davis Cup team, but do not provide any probative details to show that the beneficiary's membership required outstanding achievements, as judged by national or international tennis experts. As discussed in the preceding section, the record also shows that the beneficiary was a member of the South African team at the 1999 All Africa Games, but as this membership occurred five years before this petition was filed, it does not demonstrate the requisite sustained acclaim. I. [REDACTED] Chief Executive Officer of the South African Tennis Association

(SATA), confirms that the beneficiary has been a member of SATA for the past 15 years, but he does not state the SATA's membership eligibility criteria and the record contains no other evidence that the SATA requires outstanding achievements of its members, as judged by recognized national or international tennis experts. The record also contains no evidence that the beneficiary has instructed or coached any athletes who have gained memberships that satisfy this criterion. Accordingly, the beneficiary does not meet 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.

The petitioner submitted printouts of four articles that mention the beneficiary: "[REDACTED] Headed for Stardom," printed on February 14, 1999 in the *Sunday Times*; "SA One Win Away from Medal" and "SA Men's Double Fails in Gold Bid" posted on September 14 and 18, 1999 on the website of News24.com; and "Profile: [REDACTED]" from the website of Athletics South Africa dated 2004. The record contains no evidence that the *Sunday Times* or News24.com are forms of major media. Moreover, the articles appeared in the *Sunday Times* and on News24.com in 1999, five years before this petition was filed and consequently do not demonstrate the requisite sustained acclaim. The 2004 posting on the website of Athletics South Africa is about the beneficiary's brother and only mentions the beneficiary in passing: "He and his older brother Punch have had some excellent results as a doubles team[.]" This single brief reference to the beneficiary in a short article about his brother is insufficient to meet 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.

The record contains no evidence that the beneficiary has participated on a panel, or individually, as a judge of any tennis competitions or other tennis events. Accordingly, the beneficiary does not meet this criterion.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

The petitioner submitted support letters from Dermot Sweeney, Director of the ITF South African Tennis Association Training Centre; I. [REDACTED] of SATA; [REDACTED] a professional tennis player; [REDACTED] Director of Tennis and Head Coach at the University of Illinois at Urbana-Champaign; [REDACTED] Director and Head Coach of the Tennis Centre in Harare, Zimbabwe; [REDACTED] Director of Langazela Sports Management; [REDACTED] a professional tennis player; Dominic Modise, Head Tennis Coach at Nicholls State University in Louisiana; and [REDACTED] a professional tennis coach in Zambia. These individuals all praise the beneficiary's accomplishments and skills as a tennis player and coach, but none of their letters indicate that the beneficiary has made original contributions of major significance to his field.

On appeal, counsel claims that the director disregarded “the opinions of National and International [sic] Tennis Experts.” To the contrary, the director discussed many of the letters on the third page of his decision. Specifically, the director noted that none of the authors named any of the “nationally and internationally ranked tennis players” that the beneficiary has purportedly coached. Although Ms. Pillay states that the beneficiary has coached her, she indicates that the only competitions she won under his tutelage were the All Africa Junior under 16 singles title and the under 18 doubles title in an unspecified competition in Cairo in 1996, honors which do not reflect the requisite sustained national or international acclaim.

In addition, we note that nearly an entire paragraph is repeated verbatim in the letters of [REDACTED] Losch [REDACTED] and [REDACTED]. Another paragraph is repeated verbatim in the letters of [REDACTED] Sweeney, [REDACTED] and [REDACTED]. The repetitions indicate that the language of these seven letters is not the authors’ own and greatly detract from the letters’ probative value. Accordingly, the beneficiary does not meet this criterion.

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

The petitioner submitted no evidence relevant to this criterion. Accordingly, the beneficiary does not meet this criterion.

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

The record is devoid of any documentation of the beneficiary’s past employment. Accordingly, the beneficiary does not meet 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 record does not document the beneficiary’s previous salaries or remunerations. The employment agreement between the petitioner and the beneficiary states that the beneficiary will receive an annual salary of \$45,000. The petitioner submits no evidence that such compensation is a high salary in the beneficiary’s field. Accordingly, the beneficiary does not meet this criterion.

The record does not establish that the beneficiary has extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet any of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

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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.