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FILE: WAC 07 001 54685 Office: CALIFORNIA SERVICE CENTER Date: **JUL 29 2008**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a “premier athletic club.” It seeks to employ the beneficiary as a squash professional in order to teach and coach squash players. The company filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics.

The director denied the petition concluding that the record as presently constituted failed to establish that coaching squash players is related to a specific athletic event or events, and the duties of the position does not constitute continuing in the work of athletic performance of the extraordinary level.

On appeal, the petitioner asserts that the director erred in its decision. Counsel explained that the petitioner is the largest squash training facility in Pennsylvania, and one of the largest in the United States. Counsel further stated that the petitioner was selected as the host for the U.S. National Doubles tournament and thus, it will be a training facility for top athletes, and the petitioner wishes to “employ squash professionals of extraordinary ability who can train, coach and teach the best players in America.” Counsel contends that the director erred in denying the petition on the ground that the beneficiary’s duties in the United States does not relate to a specific event as defined in the statute. Counsel asserts that the employment agreement is sufficient to satisfy the requirement of an event under the regulations. Furthermore, counsel states that the beneficiary’s “employment duties such as teaching, coaching and coordinating athletic events, taken together, constitutes an ‘event’ according to the statute.” Finally, counsel asserts that the director acted in an arbitrary and capricious manner when it concluded, with no prior notice of the issue, that the record does not establish that the beneficiary will be performing at a particular event.

Upon review of the record, the AAO withdraws the director’s statements concluding that the petitioner failed to establish that coaching squash players is related to a specific athletic event or events, and withdraws this particular issue of the decision. As noted by counsel, the statute allows an employment contract to constitute an event under the regulations. In 8 C.F.R. § 214.2(o)(3), the regulation states:

*Event* means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien's contract.

The record contains a letter from the petitioner’s General Partner and Director, dated August 9, 2006, formally offering the beneficiary a job as an assistant squash pro. The letter indicated that the employment will commence on November 1, 2006, and the petitioner expected a three-year commitment from the beneficiary. The petitioner has established that, as of the date of filing, the beneficiary was coming to the United States for an engagement of three years duration to perform in an event as defined at 8 CFR 214.2(o)(3)(ii). The petitioner has overcome the director's objection.

The director also denied the petition on the basis that the beneficiary would not fill a position that requires extraordinary ability. As noted in the Federal Register upon publication of the final rule governing the O-1 visa classification, “there is no statutory support for the requirement that an O-1 alien must be coming to the U.S. to perform services requiring an alien of O-1 caliber.” 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). The Act only requires that the alien enter the United States to continue to work in the area of extraordinary ability. In this case, the beneficiary claims that her area of extraordinary ability is as a squash athlete, however, she plans to perform duties as a squash coach and instructor in the U.S. Thus, the petition may not be approved at this time as the record, as presently constituted, does not demonstrate that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is “at the very top” of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

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 arts.* 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 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 either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence;
  - (8) Evidence that 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 regulation at 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 record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and additional evidence supporting the appeal. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a squash professional. The petitioner indicates that the duties of the proffered position are "teaching and coaching squash players," and will include coordinating squash programs and events and individual coaching and training.

In reviewing the petition, the AAO finds that while the beneficiary may have some acclaim as a competitive squash player, the record was insufficient to establish that the beneficiary had achieved sustained acclaim as a squash teacher, instructor or coach.

On appeal, counsel for the petitioner asserts that the petitioner established that the beneficiary meets at least three of the eight evidentiary criteria for O-1 classification as outlined at 8 C.F.R. § 214.2(o)(3)(iii)(B) and thus is qualified for the benefit sought. Counsel's arguments primarily emphasize the beneficiary's qualifications as a competitive squash player.

While a competitive squash player and a squash coach share knowledge of squash, the two rely on different sets of basic skills. Thus, competitive squash and squash coaching/instruction 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. For example, Lee's 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 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). U.S. Citizenship and Immigration Services (USCIS) will not 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 such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both a squash player and coach.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award such as a Nobel Prize, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has received a major, internationally recognized award.

In cases such as this one, where petitioners seek O-1 classification of an alien athlete and coach, USCIS will consider the success of athletes coached by the alien as comparable evidence. The record also does not demonstrate that the beneficiary has instructed, trained or coached any squash players who have won major, internationally recognized awards.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

In order to meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The petitioner submitted the following: (1) the beneficiary's membership in the 1999 Australian National Team at World Junior Squash Championships; (2) a letter from the principal of the Glen Waverly Secondary College that stated the beneficiary was selected for the 1997 Australian Junior Squash Championship; (3) the beneficiary's resume outlining the awards and achievement she received in the field of squash; and, (4) a print out from the Women's International Squash Professional Authority (WISPA) ranking the beneficiary as 41 in the world for women squash players, and outlining the competitions in which the beneficiary competed.

Overall, the evidence is insufficient to establish that the beneficiary's tournament victories resulted in her receipt of nationally or internationally recognized prizes or awards for squash excellence. The beneficiary is ranked 41 in the world for women squash players, and number 80 for the ranking of Australian squash players. While impressive, it does not prove that the beneficiary reached a level of expertise indicating that she is one of the small percentage who have arisen to the very top of the field of endeavor. In addition, the petitioner did not indicate how many women are ranked by WISPA and if WISPA is the only authority that can rank squash players worldwide. 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)).

Furthermore, the record 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 squash excellence. The petitioner submitted a letter from the Director of the Fran Otten Stadium, a sports complex where the beneficiary worked as a coach. The letter states that the beneficiary "trains and works amongst some of the best athletes and squash players in the world." However, the letter does not indicate the specific squash players the beneficiary coached, and if the squash players coached by the beneficiary obtained nationally or internationally recognized prizes or awards for squash excellence. In addition, the petitioner submitted a letter from [REDACTED] a squash player who stated that she went from the world ranking of number 86 to 25 in eighteen months. [REDACTED] also stated that her work with the beneficiary "has been an instrumental part of reaching my current world ranking (14)." However, the letter does not explain if the beneficiary coached [REDACTED] during this time, or explain how the beneficiary assisted this individual in reaching a higher ranking in squash. Accordingly, the beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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 record contains evidence that the beneficiary is a member of the Squash Board Netherlands National Team; a member of the Australian World Junior Squash Team, which selected only four players to represent Australia; and a member of the Women's International Squash Professional Association Event and World Tour List.

The petitioner also submitted a letter from the Squash Nond Nederland stating that the beneficiary has "played in three European Championships and one World Championship as a respected member of the Dutch Team." The letter further stated that the beneficiary's highest ranking in the WISPA list was position 37 and she played as the number 3 in the team order, and in 2004 the team won the silver medal at the European Championships.

Upon review, the petitioner has not established that the beneficiary meets the second criterion based upon her membership in the teams listed above and WISPA. The record is devoid of any evidence that "outstanding achievement" is a pre-requisite in becoming a member of WISPA and whether it required the beneficiary to be judged by recognized national or international experts in her field.

To meet the third criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

The petitioner submitted photocopies of many articles that mention the beneficiary, although not all of the submitted evidence includes the title, date and author of such published material. The petitioner has not established how these publications could be classified as a professional publication, major trade publication or major media. Moreover, the criterion requires evidence that the beneficiary has *achieved national or international recognition* as evidenced by the published material. None of these materials indicate that the beneficiary has achieved national or international recognition as a squash instructor, and none of the published materials relate to squash players who have been coached by the beneficiary. Accordingly, the petitioner has not satisfied this third criterion.

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary'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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

For criterion number four, the petitioner submitted evidence of alien's participation on a panel or individual as a judge of work of others in the same or allied field of specialization. The petitioner submitted two certificates from Squash Bond Nederland stating that the beneficiary successfully completed the training and examination for Squash Trainer Level I and II. The certification was required for the beneficiary to coach at the Squash Bond Nederland. While her achievement of Squash Trainer Level I and II certification is noteworthy, the record does not establish that the beneficiary participated in a panel or individual as a judge of work of others. The petitioner did not explain the significance of the work judged by the beneficiary and the criteria used to choose the beneficiary as a judge. Obtaining a series of certificates to coach squash players relates to the beneficiary's basic qualifications to act as a coach; the certificates do not establish that the beneficiary "judged" other individuals in the same field of specialization.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner did not submit any evidence to establish this criterion.

Similarly, the petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

In order to establish the seventh criterion, the petitioner must establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

For criterion number seven, the petitioner submitted three letters of support. The first letter is from [REDACTED] the Director of Frans Otten Stadions, Holland, the training facility for the Dutch National Team. The letter stated that the facility is the "biggest squash complex in Holland as well as in Europe and one of the top five squash facilities in the world," and thus "attracts top players around the world to train, perform and compete." The letter stated that the beneficiary was responsible for coaching and developing programs for the club and her "position has been critical in ensuring viability of Dutch national programs and international status of the facility."

The petitioner also submitted a letter from [REDACTED] the Dutch National team number 2 player. [REDACTED] stated that she went from the world ranking of number 86 to number 25 in just 18 months and asserted that her work with the beneficiary "has been an instrumental part of reaching my current world ranking (14)."

The third letter is from [REDACTED] the manager of Houtrust Squash B.V. The letter stated that Houtrust Squash is "one of the leading squash facilities in Europe and we employ only top ranked players as coaches," and indicated that the beneficiary "played, trained and coached," at this facility.

The letters do not establish that the beneficiary's contributions were original and that they were of a major significance to her field of endeavor. As mentioned above, the letter from [REDACTED] does not indicate that the beneficiary was her squash coach. In addition, although the beneficiary was employed by Frans Otten Stadions and Houtrust Squash B.V. as a coach, it is not clear how many hours she coached and the type of squash players coached by the beneficiary. The evidence does not establish that the beneficiary coached professional squash players. In reviewing the beneficiary's resume under coaching experience, it states that she was the head coach at Hourtrust Squasgh and Fitness and was involved in "organizing of Tournaments, club days, the running of school programs, individual and team training sessions up to 25 hrs of on court work." The duties do not indicate that the beneficiary coached professional squash players with sustained national or international acclaim. In addition, the beneficiary stated in her resume that she worked part-time during the squash playing season, thus, the beneficiary was not a full-time squash coach. In addition, since the beneficiary did not coach during the squash season, it is reasonable to assume that she did not coach any of the professional squash players that would require coaching during the squash playing season.

No evidence was submitted in relation to criteria numbers three, five, six and eight.

Counsel addressed the issue of comparable evidence as it provided a list of all the national and international tournaments in which the beneficiary has participated in from 2000 until 2006, when the instant petition was filed. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) permits "comparable evidence" where the eight criteria do not "readily apply" to the alien's occupation. The list indicates that the beneficiary competed in 63 national and international tournaments from 2000 until 2006. The documentation does not establish evidence of the beneficiary's extraordinary ability as a squash player or a squash coach. The list of tournaments do not indicate if the beneficiary received any awards when competing in the tournaments. In addition, the list of tournaments do not establish the beneficiary as an extraordinary squash coach.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not "risen to this level."

Overall, 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 her 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 three 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.

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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.