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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D8

[redacted]

FILE: EAC 03 228 54599 Office: VERMONT SERVICE CENTER Date: DEC 03 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a private college. 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 him in the United States as an assistant field hockey coach for a period of three years at an annual salary of $34,126.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of a small percentage who have risen to the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief.

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 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 beneficiary in this matter is an 28-year old native and citizen of England. The evidence on the record indicates that the beneficiary last entered the United States as a J-1 exchange visitor.

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 stated that the beneficiary satisfies this criterion because he received two awards: a master coaching certificate and selection to coach at the national team level.

The petitioner submitted a letter written by a representative of the International Hockey Federation (FIH) that states:

> In 2002, in Perth, Australia, F.I.H. sponsored a [World Cup] High Performance Coaching course, available by invitation only to only the very top field hockey coaches in the world. A total of 22 coaches were selected worldwide out of several thousand possible coaches. In the U.S. only three coaches were selected, including [the beneficiary.] The FIH certification is recognized worldwide as evidence of the highest training and skill available in our sport.

In response to a request for additional evidence, the petitioner submitted a second letter written by an FIH representative that states:

> Selection to participate in the FIH High Performance Coaching Course . . . is the highest possible certification one can receive in the sport of field hockey coaching. [E]ach FIH member country submits nominations to attend this Coaching Course. From these nominations, FIH further screens the applicants and picks only the very best coaches worldwide to participate. In 2002, FIH selected [the beneficiary] as 1 of only 22 coaches for this honour. [The beneficiary] was the youngest field hockey coach to attend the course in Perth and the only coach in from the U.S. Further, he is only the third U.S. based coach to receive this Certificate in the history of the FIH coaching Certification system.

The petitioner failed to establish that FIH certification is an internationally or nationally recognized *prize or award* for excellence in the field of endeavor. An invitation to participate in a training program is not tantamount to receiving an award or prize.

The petitioner submitted a letter dated July 7, 2003 from the assistant executive director of the U.S. Field Hockey Association that states that the beneficiary was just recently selected to coach for the Senior National Team. The petitioner also submitted an undated press release from Dartmouth College that states that the beneficiary was selected to serve as an assistant coach with the U.S. senior national team. According to the evidence on the record, the U.S. National Teams compete in the World Cup, Olympic and Pan Am Games.

In review, selection to serve in a position is not an award or prize within the meaning of the regulation. The petitioner 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.

For criterion number two, the petitioner asserts that the beneficiary's selection as an assistant coach for the National Team satisfies this criterion. The petitioner failed to establish that assistant coaches for the National Team comprise an association, per se. The beneficiary does not satisfy 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.

For criterion number three, the petitioner asserts that an article written by the beneficiary and to be published in a future edition of the *U.S. Field Hockey News* satisfies this criterion. The petitioner submitted an article about the beneficiary that was published in the *Valley News* on September 15, 2003, five weeks after the filing of the instant petition. 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).

The petitioner submitted copes of press releases from the petitioner college. The petitioner failed to establish that press releases are major media. It is further noted that the press releases are undated and hence, may not be considered.

The petitioner submitted a copy of an article published in the *U.S. Field Hockey Association News*. The article is titled, "U.S. Field Hockey Women Blast Jamaica, 8-1." The article is about the U.S. team and individual players. The article quotes a player who mentions working with the beneficiary. The article is not about the beneficiary. 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 asserts that the beneficiary satisfies this criterion by virtue of his role as an assistant coach to the National Team and selection for one-on-one work with Senior National Team players. As a coach, 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 of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, the petitioner asserts that the beneficiary created his own "unique way of performing the complicated offensive move [dubbed the drag flick]." The petitioner further asserts that the beneficiary is "one of the few people in the world who can perform the skill effectively and teach it effectively." In the absence of major media heralding the beneficiary's contribution, the AAO cannot determine that it may be considered in

relation to others' contributions to the field. The petitioner failed to establish that the beneficiary satisfies this criterion.

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

For criterion number six, the petitioner indicated that the beneficiary had authored an article that would be published after the date of the filing of the instant petition. The petitioner indicated that the beneficiary had written a detailed paper on performing the "drag flick," copyright privileges to which have been sought by the manager of game development for Hockey Australia. The petitioner failed to establish that the article had been published in major media or that it has had a major impact on the field of endeavor.

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, counsel for the petitioner asserts that the beneficiary satisfies this criterion because he was "hand chosen to teach and direct Olympic caliber players on the U.S. National Team" and to individually coach one of the players on the U.S. Senior National Team. 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 establish that the beneficiary has been employed in a critical or essential capacity while serving as an assistant coach. 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 proffered salary of $34,126 is a salary above the average for an assistant field hockey coach and instructor. The petitioner submitted a copy of a prevailing wage determination that indicated that the prevailing wage for athletic coaches was $16,120 in 2003. Although the prevailing wage determination submitted indicates that the beneficiary would receive more than twice the prevailing wage for athletic coaches in the geographical area of the petitioner, the survey submitted is geographically too restrictive. This criterion must be indicative of national acclaim in the field. The petitioner should have submitted wage survey information for all athletic coaches on a nationwide basis. The petitioner should have provided more than just a prevailing wage. To evaluate whether the salary is high, CIS needs to compare it to the median and highest wages offered nationwide to athletic coaches. The beneficiary does not satisfy this criterion.

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.