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U.S. Citizenship
and Immigration
Services

[redacted]

FILE: SRC 04 024 50289 Office: TEXAS SERVICE CENTER Date: MAY 24 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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The nonimmigrant visa petition was denied by the [redacted] and is now before the [redacted] on appeal. The appeal will be dismissed.

The petitioner is a tennis academy that [redacted] and is seeking O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics [redacted] order to employ him in the [redacted] a period of two years at an annual salary of $30,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in athletics.

On appeal, counsel for 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.

The beneficiary in this matter is a native and [redacted] o the evidence on the record, the beneficiary has been a tennis competitor and a coach.

On appeal, counsel submits certification verifying the [redacted] status as a [redacted]

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).

The petitioner submitted the following evidence:

[redacted] ertification that the beneficiary received a rating o [redacted]

[redacted] that the beneficiary received a rating of [redacted]

he beneficiary received a rating

entification card.

•Certificates of Achievement for Outstanding Participation in the

ttendance at various tennis workshops.

•An affidavit written a tennis professional stating that the beneficiary "is an outstanding coach [whose] skill surpasses that of most specialists [he has] previously worked with."

•An article printed in the that mentions that the beneficiary is a staff member of the city and

•A photograph of the beneficiary as a coach at the

For criterion number one, counsel asserts that because the beneficiary achieved the "Professional 1" rating, the highest rating possib he beneficiary is an alien of That an alien may have the highest professional skills does not place him at the very top of his field in the world of tennis. The professional ratings referred to by the petitioner do not take into account the national rankings of the consistently top seeded players in national tournaments.

Counsel's argument is not persuasive. The petitioner failed to establish that the beneficiary's certification of attendance and of professional ratings are internationally or nationally recognized prizes or awards for excellence in the field of endeavor. The assertions of counsel do not constitute evidence

It is noted that the beneficiary achieved the "Professional 1" ratin ix months 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

For criterion number three, the petitioner submitted an article published in the periodical that mentions the beneficiary. The article is not about the alien. The beneficiary does not satisfy this criterion.

No evidence was submitted in relation to criteria numbers two, four, five, six, seven or eight.

The regulation a[redacted] requires the beneficiary to "continue work in the area of extraordinary ability." The petitioner, however, intends to work as a coach in the United States. While a tennis player and a coach certainly share knowledge of tennis, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been uphe[redacted] 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, [redacted] 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.

[redacted] 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 his extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully coached. In the instant case, the record does not show that the beneficiary has coached top seeded players.

The burden of proof in these proceedings rests solely with the petitioner [redacted] Here, the petitioner has not met that burden.

**ORDER**: The appeal is dismissed.